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ABSTRACT

This is a hearing before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Fifth Congress, Second Session on Bureau of Prisons, Youth and Juvenile Policies. Norman Carlson, Director of the Federal Bureau of Prisons, makes a statement, and there is an exchange of correspondence between Carlson and Peggy Wisenberg of the National Prison Project. Also included is a description of juvenile facilities, prepared by the Federal Bureau of Prisons. (PJC)

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# BUREAU OF PRISONS YOUTH AND JUVENILE POLICIES

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## HEARING

BEFORE THE

## SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

BUREAU OF PRISONS YOUTH AND JUVENILE POLICIES

OCTOBER 27, 1978

**Serial No. 79**

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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# CONTENTS

## WITNESSES

Page
Carlson, Norman A., Director, Federal Bureau of Prisons ..... 4
  Prepared statement ..... 4
Davis, Micheal, Attorney, Madison, Wis ..... 36
Phelps, Richard J., Youth Policy and Law Center ..... 21
  Prepared statement ..... 27
Girouard, Phyllis, Menominee Legal Defense/Offense Committee ..... 30
Hawpetoss, Louis, Menominee Legal Defense/Offense Committee ..... 30

## APPENDIXES

Appendix 1. Statement of Roberta J. Messalle, a cofounder of Institution Educational Services, Inc ..... 43
Appendix 2. Title 18, United States Code, chapter 402—Federal Youth Corrections Act ..... 65
Appendix 3. Title 18, United States Code, chapter 403—Juvenile Delinquency ..... 68
Appendix 4. Selected correspondence and materials relating to federally adjudicated juveniles ..... 69
  1. Exchange of correspondence:
    (a) Peggy A. Wiesenberg, national prison project—ACLU, letter dated Apr. 19, 1978, to Director Norman Carlson, Federal Bureau of Prisons ..... 69
    (b) Norman Carlson, dated Apr. 27, 1978, to Peggy A. Wiesenberg ..... 70
    (c) Nan Aron, national prison project—ACLU, letter dated May 10, 1978, to Representative Robert Kastenmeier ..... 71
  2. Norman Carlson, letter dated June 9, 1978, to Senator John C. Culver ..... 72
  3. Nan Aron, letter dated July 14, 1978, to Representative Robert W. Kastenmeier ..... 76
  4. Exchange of correspondence:
    (a) Norman Carlson, letter dated Apr. 27, 1978, to Mr. Walter R. Echo-Hawk, Native American Rights fund ..... 78
    (b) Walter R. Echo-Hawk, letter dated May 15, to Norman Carlson ..... 79
    (c) Nan Aron, letter dated July 19, 1978, to Representative Robert W. Kastenmeier ..... 80
  5. Alvin Bronstein, executive director, national prison project-ACLU, letter dated Aug. 22, 1978, to Representative Robert W. Kastenmeier ..... 80
  6. Description of juvenile facilities—prepared by the Federal Bureau of Prisons, Oct. 1978 ..... 81

# BUREAU OF PRISONS YOUTH AND JUVENILE POLICIES

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OCTOBER 27, 1978

House of Representatives,
Subcommittee on Courts, Civil Liberties, and the
Administration of Justice
of the Committee on the Judiciary,
*Madison, Wisconsin.*

The subcommittee met, pursuant to notice, at 9:30 a.m., in Senate Parlor, State Capitol, Madison, Wis., Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier and Railsback.

Also present: Bruce A. Lehman, counsel; Joseph V. Wolfe, associate counsel.

Mr. **Kastenmeier**. I'd like to call the meeting to order.

This morning I'd like to at the outset express my appreciation to Senator Fred Risser and other State officials who made facilities available to this subcommittee of the House Judiciary Committee for purposes of this hearing.

I am pleased that all who are here this morning could attend, and I particularly wanted to greet the ranking minority member of the subcommittee. The Subcommittee on Courts of Liberties on the Administration of Justice has within its jurisdiction corrections in America, including the Federal Bureau of Prisons and Federal acts relating to incarceration.

The ranking minority member, Congressman Railsback from Illinois, for some years has been particularly interested in juvenile justice. He has offered numerous bills on the subject and was a primary proponent of changes in the Youth Corrections Act in 1974. I'm very pleased, this is really a joint effort this morning with Congressman Railsback.

This hearing is a forerunner of future hearings on the subject. There are other interested parties who are not here this morning. This is not intended to be the beginning and the end of this inquiry into the administration of several acts relating to youth offenders and juveniles in Federal systems. But we think it an appropriate time and an appropriate place to open our inquiry. Further hearings will be held either in Washington or other places within this country.

In my opening of the meeting I would like to say that the Juvenile Justice and Delinquency Prevention Act and Youth Corrections Act were both passed by Congress in an attempt to divert our youth from the debilitating effects of the criminal justice system by requiring placement in foster homes, community treatment centers, isolation from hardened criminals, and specialized programs in segregated facilities. The intent of Congress was to prevent impressionable and troubled youths from coming into close contact with older, more experienced persons confined in the criminal justice system in the hope that these young persons, in some cases children, could find a more productive and crime-free life before such pressures and influence permanently bound them in our already strained prison populations.

Under both the Juvenile Justice Act and the Youth Corrections Act, the Federal Bureau of Prisons was given the responsibility and authority to provide alternatives to imprisonment for child offenders. However, critics of the Bureau have stated that its attempts to meet the mandates of the acts are inadequate, and some have charged even negligent. One result of this criticism has been litigation challenging the manner in which the Federal Bureau of Prisons has carried out its responsibilities under the law. Indeed, one of the more prominent court cases challenging the Bureau's management of youth offenders was *Brown* v. *Carlson*, which was decided by Judge James Doyle, here in Madison. That case involved the placement of a youth offender, sentenced under the Youth Corrections Act, in the Federal Correctional Institution at Oxford, Wis. In his decision in that case Judge Doyle found that the Federal Bureau of Prisons was not performing its statutory mandate of keeping youth offenders separate from more hardened adult offenders.

When Congress mandated the special treatment of youthful child offenders, it did so with good reason. If we can separate the young offenders from the environment which encourages a life of criminality, we will have increased the possibility that he will be able to grow into an adulthood less likely to harm both society and himself.

The purpose of today's hearing is to examine the effectiveness of the Bureau of Prisons in carrying out the policies set forth by Congress in the Youth Corrections Act and the Juvenile Justice and Delinquency Prevention Act.

And in that respect, before I greet our first witness, I would like to yield to my colleague, Tom Railsback, for any statement Mr. Railsback may care to make.

Mr. RAILSBACK. Mr. Chairman, I want to thank you for opening this hearing, and I would really like to commend you for what I think has been your leadership not just in respect to juvenile justice, but also corrections generally. And if I have learned anything in my experience with prison reform and with juvenile justice, it is that progress sometimes comes slowly. It is sometimes measured, I think, in millimeters.

I believe that a primary reason for the slow progress in solving many of the problems associated with juveniles is the lack of information available. The Children's Defense Fund's recent report on children in all the jails concluded that there was a serious lack of information on children in adult jails, and that no Federal agency had done recent studies on children in jail. And they pointed out, and I quote:

> No summaries or statistics could portray the depth of anguish, fear and terror when children feel abandoned or subjected to abuse and are uncertain as to how long they will be locked up or what will happen to them in jail.

I remember attending a conference, I think it was at Ohio State University, and I met Rosemary Saury from the University of Michigan, who had completed a report which I found to be very corroborative of the statement that I just read.

Actually, in 1976 in the Federal prisons alone there were 20 homicides, and it is estimated that over half of all Federal inmates were sexually assaulted. And I'm sure that these figures are much higher in our State prisons. We all know and so do our children that they are prime prey for assault and physical abuse in adult facilities.

The children's defense fund made clear that the question of how many children are held in jail throughout the country will not be truly answered until communities, States, and the Federal Government become committed to finding out why children are jailed, which children are placed behind bars, and what happens to children in jails.

In 1974 Rosemary Saury estimated that up to a half million children are held in adult jails each year. And, to be honest, in trying to find out right now, aside from the Federal level, we received cooperation from Norman Carlson, but in trying to get a handle on how many children are in jails or penitentiaries throughout the country, nobody—virtually nobody was able to give me that information.

So, we obviously have our work cut out for us to improve the plight of the juvenile and youthful offenders in this country. The problems are so complex they are going to require all our dedication and energy. And it's not good enough to be simply aware of the problems.

In my opinion we must convince an uninformed and apathetic American public that we must devote sufficient resources to attack the problems. In other words, the National Clearing House can make recommendations for humane facilities, the Bureau of Prisons can set examples for the State by their compliance of the Juvenile Justice and Delinquency Act of 1974 and the Youth Corrections Act. And for those of us in legislative bodies, hopefully we can come up with more imaginative ideas.

Let me just say that my interest in corrections in juvenile problems goes back to when our chairman, Bob Kastenmeier, decided that we should exercise jurisdiction over correctional facilities. We embarked on a series of prison visits, and during those series of prison visits and also to juvenile facilities I think for the first time in my life, even though I am a lawyer, had practiced, I became convinced that we literally were ignorant about the conditions in many of these institutions.

So, I'm delighted, Mr. Chairman, to be here, and I'm delighted that we are trying to get a handle on what I think is a very, very serious problem.

Mr. KASTENMEIER. Thank you, Congressman Railsback, for those comments.

I think what Congressman Railsback has said should suggest to us one point. This morning we are looking at one aspect of the problem of incarceration of youth and juveniles—that is incarceration in the Federal system. But as Tom Railsback has suggested, the problem is far more pervasive than that, and perhaps greater abuses will be found in other places.

This morning we are looking at the Federal Bureau of Prisons Systems, and criticisms of that system.

I'm very pleased to have as my first witness the Director of the Federal Bureau of Prisons, Norman Carlson. Norman Carlson is here today along with several members of his staff. He has been considered one of the most innovative and progressive minded of our Federal prison administrators over the years. He—whatever his administration produces—well understands that there will never be perfection in any Federal prison system. And he is, I think, steeled to some of the criticism that has been leveled. I'm very pleased to have a person who Mr. Railsback, the rest of the committee, myself have come to admire for his efforts to provide conscientious leadership in the Federal system.

I'd like to call the Director of Federal Bureau of Prisons, Norman

## TESTIMONY OF NORMAN A. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS

Mr. CARLSON. Thank you very much, Mr. Chairman, Congressman Railsback. I'm very happy to be in Madison today. As a native midwesterner, it's always good to be back in the heartland of America. As you probably know, I grew up in a State immediately west of Wisconsin. It's always a pleasure for me to get back here and have a chance to talk with people who share the same problems that we have.

Let me, first of all, compliment you and Mr. Railsback, Congressman Kastenmeier, in terms of your continuing interest in the problems that we face in the Federal prison system today. You have taken time from very busy schedules to visit our institution to see firsthand the problems that we have and to try to help us in terms of legislative authority, and also in terms of the appropriations that obviously are required to do a more effective job of handling the very difficult task we have in the American criminal justice system.

I'm accompanied today by Mr. Ogis Fields who's the warden of the Federal Correctional Institution at Oxford, Wis., an institution approximately 60 miles north of the city of Madison, also, by two members of my staff from the Washington office.

I have a prepared statement, Mr. Chairman, but with your permission I would like very much just to introduce it into the record, if I may, and summarize.

Mr. KASTENMEIER. Without objection, Mr. Carlson's statement will be accepted and made part of the record. And you may proceed as you wish, Mr. Carlson.

[Statement follows:]

### STATEMENT OF NORMAN A. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear before you today to discuss Bureau of Prisons policies for offenders committed to Federal custody under the Youth Corrections Act and the Juvenile Justice and Delinquency Prevention Act.

As you know, under the Youth Corrections Act, offenders up to 26 years of age may be committed to indefinite terms of imprisonment. When this statute was enacted in 1950, it was considered a landmark of policy-making for criminal justice. At the time of its passage, the act reflected the prevailing belief that crime could be effectively treated with intervention and rehabilitation.

Offenders committed to custody under the Youth Corrections Act vary widely in age and in criminal background, as do juveniles committed by Federal courts. As a result, the administration of both the Youth and Juvenile statutes presents many difficult challenges.

Juveniles may be adjudicated as delinquent for federal offenses committed prior to their 18th birthday. When juveniles are committed to federal custody, they are placed in state, local and private institutions and community-based facilities under contracts with the Bureau of Prisons which defray their costs.

When Congress adopted the present Federal law concerning juvenile delinquency in 1974, many significant new provisions were added. Perhaps the most far-reaching was the requirement that individuals committed to custody as juveniles be separated from all other offenders. The Federal Prison System has implemented this by removing juveniles from federal institutions. We have contracted with more than 75 agencies and organizations to provide care for them.

Our 50 Community Programs Officers work with the U.S. Probation Service, Federal Judges, and with the administrators of public and private agencies and institutions, on a case-by-case basis, to find the most appropriate available placement for each juvenile offender that is as close to his or her home as possible. Placing adjudicated delinquents in exclusively juvenile facilities, however, presents a number of difficult problems.

First, the age range of federal juveniles is higher than that of most states. Offenses that are committed up to the 18th birthday are considered juvenile acts, under federal law, and the offender may be incarcerated until his or her 21st birthday.

Because many states have age 16 as the limit for offenses which are treated as juvenile acts, and individuals who are 18 years of age or older are treated as adults when in custody, the number of places available for federal juveniles is limited.

In addition, the juveniles who are referred for federal adjudication are often those who have already exhausted local resources. It is difficult, if not impossible, to place an individual back into a community-based facility where he or she has already failed. The juvenile offenders committed to federal custody contain a disproportionate share of individuals who are charged with violent offenses, or who have long histories of serious behavioral problems.

Among those individuals committed to our custody as juveniles, homicide, rape and assault are the most common offenses; over half were committed for offenses involving harm or risk of harm to another person.

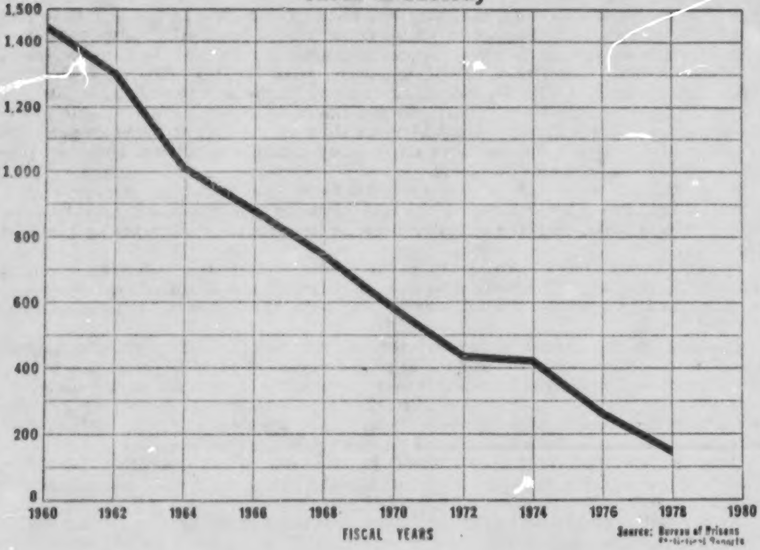
As a result, the juvenile offenders for whom the federal system is responsible tend to be older, and present more serious problems than other juveniles in custody. As a result, many community-based juvenile facilities are unwilling to accept federal juveniles. Efforts are directed toward locating facilities which will accept federally adjudicated juveniles, and we work with the administrators of these agencies to improve their facilities, and to meet professional standards of humane care.

There are presently 161 juveniles in federal custody, and all but two emotonally disturbed individuals are in non-federal facilities. One of these two individuals was moved to the Federal Correctional Institution at Butner, North Carolina, after assaulting other residents and staff of a contract facility, and destroying the personal property of others. Because of his assaultive behavior, he was not accepted in another contract facility. The second individual was returned to federal custody at Butner as a parole violator when his sister required hospitalization after an assaultive incident. A number of contract facilities were contacted, but all refused to accept him due to his past aggressive behavior. An outside psychiatrist cited the explosive nature of this individual's behavior, calling him potentially homicidal.

Placement of these individuals at Butner is not the ideal solution but there is no other alternative when contract facilities refuse to accept an individual who has displayed a history of assaultive behavior. The individuals placed at Butner are separated from others to the maximum extent possible. When it becomes necessary to place a juvenile at Butner, the Federal Judge who has jurisdiction is notified.

There is, however, an optimistic note to the problems of dealing with juvenile offenders at the federal level. The number of adjudicated juveniles in federal custody has been consistently going down. This trend began with a Department of Justice policy to refer every possible juvenile case to local authorities. This policy was initiated early in the 1960's, because juvenile offenses were viewed as basically a local problem. This policy also kept the individuals involved as close to their homes as possible. The preference for dealing with juveniles at the local level was written into statute as one of many important policy objectives of the juvenile delinquency law reform in 1974.

**Number OF FEDERAL JUVENILE DELINQUENCY ACT Cases in Custody**



Source: Bureau of Prisons
[illegible]

The 1974 legislation, was concerned with the procedures used in adjudicating juveniles, as well as their disposition to probation or to an institution, following adjudication. The second statute which is under consideration today, the Youth Corrections Act, is devoted almost entirely to sentencing, and the dispositional steps which follow conviction.

The Youth Corrections Act, as its authors spelled out in its legislative history, was "to provide for the youthful offenders committed . . . by courts of a system of analysis, treatment, and release that will cure rather than accentuate the anti-social tendencies that have lead to commission of crime."

No one could have disagreed with those sentiments. In the 28 years which has passed since the enactment of these purposes into law, however, the prevailing view of criminal justice in both the U.S. and abroad has changed significantly. Criminal behavior is no longer viewed as a disease which can be diagnosed, treated and cured.

The Youth Corrections Act recognizes that not all young adults convicted of federal offenses should be committed under its terms. The decision to commit an individual to a Youth Act term is discretionary with the sentencing judge. When an offender is sentenced under the act, the term of incarceration may be longer than would have otherwise been given for the same offense under the regular sentencing statutes.

The degree to which use has been made of the Youth Corrections Act has varied widely. Overall, during the past 10 years, individuals committed to custody under the Youth Corrections Act ranged from 11.8 per cent of those committed in 1966 to a low of 8.4 percent of those committed in 1977. During 1977, the percentage of individuals ranged from 7 per cent of all commitments in the 2nd Judicial Circuit to a high of 17 per cent in the 10th Circuit.

The Bureau of Prisons is adopting a new system to designate individuals to the institution where they will serve their term of incarcertation. Its objective is to place the offender in the least secure facility based on the individual's background, and the closest to his home. The new system does not use age as a factor, except for individuals sentenced under the Youth Corrections Act. They are designated to those institutions which have seperate living units for YCA cases. The other factors which are used are better measures than the use of a particular sentencing structure in making program resources available to the individual who has been incarcerated. There was a commitment to enhance program opportunities for *all* youthful offenders. When the YCA legislation was passed, resources to develop and implement programs were scarce.

The YCA correctly focused attention on the needs of a special group of offenders. This type of programming opened the door for similar increases in programs opportunities for individuals who did not qualify under YCA but who had similar or even greater needs.

Under the YCA law (and the more recently enacted Narcotic Addict Rehabilitation Act of 1966) individuals are committed to the Bureau of Prisons for treatment. The Act defines treatment as "corrective and preventive guidance and training designed to protect the public by correcting the anti-social tendencies of youth offenders." The problem is treatment of this type cannot be made mandatory. Unless individuals want to be helped they frequently go through the motions rather than becoming personally involved in the programs available.

Despite the shift in the objectives of criminal sanctions, the Bureau of Prisons continues to believe that inmates can and do change while incarcerated. Program resources can facilitate change, but change cannot be coerced or predicted. Offenders who want help should have available to them a wide-variety of programs. We attempt to make available to *all* inmates programs which they are interested in pursuing.

The concept of voluntary programming for inmates was described in detail by Dean Norval Morris of the University of Chicago Law School in his book, "The Future of Imprisonment". Dean Morris is working closely with the new Federal Correctional Institutions at Butner, North Carolina, where these concepts are being tested.

Researchers from the University of North Carolina are collecting data concerning the effectiveness of the Butner program, and so far the results have been encouraging. In the preliminary data, offenders sent to Butner become involved in, and complete more programs than comparable offenders randomly assigned to other institutions.

While the Youth Corrections Act was a landmark at the time of its passage, we believe that experience and changes which have taken place over the years have caused the Act to outlive its usefulness. We support those provisions of the proposed legislation to revise the Federal Criminal Code which would eliminate the Youth Corrections Act. In our opinion, sentences for youthful offenders should not be longer than those given older individuals who commit similar offenses.

Several states, including California, have recently ended their reliance on indeterminate sentencing statutes similar to the Youth Corrections Act and the Narcotic Addict Rehabilitation Act. We believe that correctional resources can be better allocated to the individuals who need and will benefit from them without reliance on such special sentencing statutes.

I appreciate the opportunity to be here today, and to discuss the juvenile, youth and young adult offenders committed to federal custody. I would be pleased to answer any questions you may have.

Mr. CARLSON. Mr. Chairman, the topic of the hearing today deals with the Bureau of Prisons' policies and procedures in regard to the handling of youthful offenders, particularly those committed under the Federal Juvenile Delinquency Act and under the Youth Corrections Act.

If I might, I'd like to start with the Juvenile Delinquency Act and describe some of the problems and policies that we have in regard to that particular type of offender.

First of all, under the Federal law anyone who commits a Federal crime under the age of 18 at the time of the offense is considered to be a juvenile. And that person can be housed in an institution or in a community facility under supervision until age 21.

The Federal law differs from any State laws because in many areas we find that the age of juvenile delinquency extends only to age 16 or 17, and that the offenders can only be held to age 18.

So, we do have a dichotomy between the Federal law, which goes up until age 18 for juvenile offenders versus many of the State systems which use 16 or 17 as the breaking point between juvenile and adult criminality.

This, of course, presents a significant problem to us, because as we try to place Federal juvenile offenders, we find many States unwilling to accept them simply because they're beyond the age of juvenile status in that particular State.

As you alluded to, Mr. Chairman, in 1974 the Congress enacted the Juvenile Justice and Delinquency Prevention Act, which is a very far-reaching law trying to attack many of the problems that you eluded to in terms of trying to deal more effectively and efficiently with juvenile offenders.

There were many changes incorporated into that act, the most significant without question is that there should be complete separation of adult versus juvenile offenders. In other words, juveniles should not be housed in an institution or a facility where they have contact with adult offenders. There is no question in my mind or, for that matter, in the minds of any of us in the criminal justice system, that that's a very important part of the act, and I think it's something that was long needed in terms of a definitive statement by the Congress that separation is required.

On the other hand, it does present problems to us. As I eluded to earlier, we find many juveniles in the Federal system who because of the age difference are simply unsuited or unacceptable by States that are the primary recipient of many of these juveniles that we have under Federal supervision.

In terms of handling the Federal juvenile offenders, we have 50 community programs' officers stationed strategically around the country—we have one here in Madison, Wis. Their primary responsibility is to work with the Federal courts and the U.S. Probation Service in finding on a case-by-case basis the most appropriate place to house juvenile offenders. Our objective is to find the least restrictive environment possible, hopefully a halfway house or a foster home, and also to place the offender as close in proximity to his own home as we possibly can.

We currently have some 75 contracts that we have enacted throughout the country, and we use those contracts for handling all of the juveniles that are found guilty or adjudicated by the U.S. district courts across the country.

At the present time we have 161 juveniles under active Federal supervision. In all but 2 of those 161 are currently in a State, local, or a private facility under contract with the Federal Government. The two that are presently in our custody I'd like to address in a moment, because I think it does rather graphically portray the problem that we have.

One of these is now 20 years of age, a long history of emotional problems, a long history of assaulted behavior. He's been tried in a variety of State and local institutions. Most recently when he was committed to our custody he was placed in a State institution which is specifically designed to treat the most disturbed juvenile offenders in that State. Unfortunately, he assaulted staff and other inmates and as a result of a long history of assaulted behavior in that institution the State authorities insisted that we take the offender back into a Federal institution.

The other case I'd like to describe is now 19 years of age, again emotionally disturbed, returned to our custody as a parole violator after he attempted to kill his sister, has been diagnosed as homicidal by a number of psychiatrists and obviously presents some very serious emotional problems.

The reason I call these two cases to your attention, Mr. Chairman, is that I think it graphically portrays the one area of the juvenile justice system that we still have not been able to adequately attack, and that's the older, more seriously deficient, more seriously delinquent, I should say, juvenile offender, who simply does not fall in the present time within the categories of either State, local, private, or, in our case, Federal institutions.

What we've had to do with these two juveniles, much to our dismay, is to house them at the Federal correction institution at Butner, N.C. We don't like to do this, it's far from an ideal solution. But we chose Butner because we do have mental health units there. We have a full-time psychiatric staff, which is also affiliated with the Duke University School of Psychiatry, and that simply was the best alternative we had—the only alternative, for that matter, that we had.

Mr. **Kastenmeier.** What happens, Mr. Carlson, once the 20-year-old becomes 21?

Mr. **Carlson.** He will be released from custody unless the Federal court decides to prosecute for some of the assaulted behavior which has occurred since his incarceration, and that is a very strong likelihood. He's assaulted our staff at Butner as well and the U.S. attorney is currently considering proceeding against him under adult statutes.

But it does, I think, graphically illustrate the problem that we face from time to time with some of the most serious and violent juvenile offenders who at age 20 really are not juveniles in the eyes of most of us, I think, yet are sentenced under the Juvenile Act and as a result we have to keep them separate insofar as we possibly can.

Again, I'd like to just talk a bit about the juvenile offender. Attached to my statement you will note a chart which I think is perhaps the most optimistic chart that I could possibly present to you this morning. As we've discussed in prior hearings in Washington. The Department of Justice and the Federal Bureau of Prisons for many years have been attempting to shift the burden and shift the responsibility for most juvenile offenders to State and local authorities. And as a result of our efforts we've decreased the number of juveniles from 1,400 in custody in 1960 down to a total of 161 today. And while we still have more than I would like to have, I think it does graphically reflect the Department of Justice's policy, which is a direct result of the interest of this committee, particularly of yourself and Congressman Railsback, of trying to place the responsibility of juvenile offenses where I think it should be placed and that's primarily with the local governments as well as State authorities.

Mr. **Kastenmeier.** Can you, and there really has been a dramatic decrease from about 1,450 or more or less to 150. Is it your personal belief that these individual juvenile offenders—juvenile delinquents fare better in State and local systems than they would if they were kept in the Federal system?

Mr. **Carlson.** Yes, Congressman, I do. I think it does two things:

No. 1, it places them far closer to their families and homes than we could possibly do with a Federal system that crosses all 50 State boundaries. In addition, I think the resources of the local governments in particular are far better in terms of handling juvenile delinquency than is the Federal Government, and I think this is an appropriate area where the Federal Government should intervene only where there is absolutely no other alternative, and that's the policy that the Department of Justice, the U.S. attorneys, and the Bureau of Prisons have been following since the 1960's.

Mr. KASTENMEIER. The law also requires, I believe, the Department of Justice make a determination that the local or State facilities are adequate for this purpose.

Mr. CARLSON. That's correct, and we do follow the Juvenile Justice Act insofar as we can.

I mentioned we have 161 juveniles under contract with State, local, and private agencies today. Roughly a third of those 161 are in community-based programs, primarily halfway houses, foster home care, the other two-thirds are in some type of a specific juvenile institution operated basically by State governments. But again, I think that the burden should shift to the States, and I think the Juvenile Justice Act, of course, does provide resources and we as a Federal agency also defray the contract costs of these offenders. So, in reality the State governments, I feel, are being adequately reimbursed for their expenditures for the juvenile offender. It's not that we're just dumping the problem on them, we also are providing the resources through the Juvenile Justice Act, as well as through our own contractual authority. We do pay a per capita cost to each of the State institutions or private institutions, which is based upon their actual cost of operation.

So, I feel, and I think most State administrators would agree, that the Federal Government adequately is reimbursing them for their cost of operation.

Mr. KASTENMEIER. I say that because, you know, there have been State systems that have dreadful juvenile facilities. In fact, we put through the House a bill, H.R. 9400, to enable the Attorney General to intervene and to initiate suits where juveniles and certain other classes of persons are involved. But, some of the juvenile abuses we've heard about under public authority throughout the country are pretty bad, and I trust that they're not committing juvenile delinquents in the Federal system and diverting them into those unacceptable State systems.

Mr. CARLSON. Mr. Chairman, we're doing the best we possibly can to evaluate the State institutions. Our community programs' officers do examine those institutions and, obviously, if we find abuses of any type we're not going to place a juvenile offender in that type of a facility.

I do have to say, however, that the quality and the caliber of staff in those institutions varies from State to State as you'd expect. Some are excellent and some, perhaps, are more marginal. But, again, we do the best we can and if we find any evidence at all of abusive behavior on the part of the staff toward the inmate population, we will immediately cancel the contract and remove the juvenile offenders.

Also, we are working with the juvenile justice activity in LEAA that a—juvenile justice institute, and our objective, of course, is to place Federal juveniles only in those institutions where the State is adequately—fully certified under the juvenile justice standards.

Mr. RAILSBACK. Is the average cost about $37 per day?

Mr. CARLSON. That's correct, for juvenile offenders, that's correct. And it's considerably higher than for adults and I think that's understandable because of the higher costs of staffing in those facilities.

Mr. Railsback. What is the difference between, say, community-based cost and institutional cost?

Mr. Carlson. Essentially, Congressman Railsback, there is no basic difference. The rates of a good juvenile program in a community are as high, frequently, as an institution cost, particularly if they have an adequate level of staff.

We don't, of course, pay for the building cost, the capita cost of construction. Our contracts are only for the provision of staff supervision. And again, a good community-based program with adequate staffing is going to be almost as expensive as institutional staffing.

Mr. Railsback. Is that true of foster homes as well? In other words, do you pay them about the same?

Mr. Carlson. Rates are almost comparable.

If I may, Mr. Chairman, I'd like to turn briefly to the Youth Corrections Act and just comment as to the application of that act in the Bureau of Prisons.

First of all, the Youth Corrections Act was passed by the Congress in 1950. I think it's fair to say today that it reflected the thinking at the time in terms of public policy. The theory behind the Youth Corrections Act with the youthful offender, the primary emphasis should be on the diagnosis and treatment of youthful offender behavior.

Essentially, it's an indeterminant sentencing provision where the court would impose a sentence generally up to 4 years and the amount of time the defendant spends in custody would be determined by the Parole Board based upon the idea that the staff and the Parole Board jointly could diagnose and treat and predict when the offender was ready to be returned to the community.

I think it's also fair to say that within the last 5 years; both in this country and abroad, the courts and most people in the criminal justice process have become disenchanted with indeterminant sentencing. Most States that have had indeterminant sentencing laws, such as California, no longer have them on the books because experience has indicated that in reality they require inmates to serve longer times in institutions than if the courts imposed a regular sentence.

In other words, if the court imposed a 5- or 3-year sentence, the defendant would be released within that timeframe. Indeterminant sentences, however, frequently result in people being held in incarcerated conditions far longer than adult offenders who committed a similar crime.

As I mentioned, the disenchantment with indeterminant sentencing and states such as the Youth Act not only I think pervades in this country but also in many European countries where the shift is more toward a definite sentencing framework and away from indeterminant sentencing.

I think in this country we essentially have abandoned the medical model. We no longer believe that we can diagnose and treat criminal behavior. At the same time we certainly have not given up the notion that inmates can and do change while incarcerated, particularly the young offenders. Also, we have the responsibility to provide those opportunities for offenders who want to change. In other words, opportunities such as counseling, education, vocational training are all absolutely essential if we're to assist the offenders who are committed to our custody.

We have found, in recent years particularly, that Federal courts are no longer committing offenders under the Youth Corrections Act as they had in the past. Their experience, the courts' that is, is that many offenders are held far longer than they want and as a result they would far rather impose a relatively short sentence for a youthful offender, and I think that's appropriate. They'll impose a sentence of a year, a year and a half, for example, rather than the indeterminant sentence where many defendants were held up to and including the full 4 years.

So, it's presented a real anomaly to us. We find that many courts simply will refuse to use the Youth Corrections Act, because they feel that they can control the length of time a defendant spends in custody far more effectively by imposing an adult sentence.

We have——

Mr. Kastenmeier. Statistically can you demonstrate that?

Mr. Carlson. Yes.

Mr. Kastenmeier. Do you have fewer people committed to you under the Youth Corrections Act now than previously?

Mr. Carlson. Yes, I think in the statement itself, Mr. Chairman, we point out that the number of youthful offenders today is roughly 8 percent of our total population, which is perhaps the lowest, as I recall, that it's been in recent years. But it's been a rather steady decline, particularly among many U.S. district court judges.

I've attended two sentencing institutes within the past 2 months, and I can say I think without any hesitation that the vast majority of Federal judges simply no longer use the act because of their own disenchantment with indeterminant sentencing. They would far rather, when they see a youngster that they feel can be assisted, give him a short adult sentence where they can control the length of incarceration rather than this indeterminant sentence which provides up to 4 years of institutional care and treatment.

Mr. Kastenmeier. But can I conclude that there are more or less the same number annually committed under the Youth Corrections Act as 10 years ago?

You've indicated that the commitments—the sentencing under the act has ranged from 11.8 to 8.4 percent, a decline.

Mr. Carlson. Yes.

Mr. Kastenmeier. But everybody also knows that your total commitments, prison population, particularly, or those under your authority have increased. So, I assume that commitments under the Youth Corrections Act have been more or less constant.

Mr. Carlson. It's a straight line.

Mr. Kastenmeier [continuing]. Under the Youth Corrections Act have been more or less constant.

Mr. Carlson. The commitment rate would be fairly constant. The number, of course, has been declining because of the relative size of the total commitment rate, you're right.

But again, I just want to point out the problem, and I think you can understand the dilemma we're in, whereas some judges will give a youngster that they feel requires short incarceration a 1-year adult sentence and another judge imposes a 4-year indeterminant sentence, and we have to try to make some magical distinction between these two defendants. And frequently there is no distinction. They both are essentially the same. One happened to be sentenced by a judge who still uses the Youth Act, the other by a judge who simply refuses to use that act today because of prior experience. And it does present a real dilemma to those of us such as Warden Fields who are responsible for operating a prison system. We try to treat these people equitably and all with decent opportunities for change, particularly those who want to change.

The bottom line, very candidly, Mr. Chairman, is I personally believe the Youth Act should be repealed. As you know, the Department and the administration last session of Congress, which just terminated, sent to the Hill a reform bill for the Federal criminal code. That bill, of course, did not pass the House, but one of the major features of the administration's bill was to abolish the Youth Corrections Act.

As I recall from my own experience testifying before your committee and also in the Senate side, the only feature of the Youth Act which was particularly attractive to Members of the Senate and the House was the expungement provision.

Under the Youth Act, as you can recall it, there is a provision by which the criminal record can be expunged. My personal feeling is that the expungement provision should be retained for all defendants. I don't think that age is—chronological age in particular, should be the only way that a court can expunge a record.

I think that we—as we reform the criminal code, which hopefully we will do, would be to build a general expungement provision after a certain number of years where the court or the Parole Commission or some authority has the ability to expunge criminal records. I think it's today a disaster where only offenders under the—sentence under the Youth Act can have the records expunged, whereas a very similar defendant who may be less culpable who receives a very short sentence under the Adult Act doesn't have that ability.

So, I would urge that when the Congress reconvenes it considers criminal code reform; that if the Youth Act is repealed, as I hope it will be, that the general expungement provision can be built into the existing legislation. I think it would be a real asset to those of us in corrections, and I think it would be very helpful to those defendants who are committed to custody.

Mr. Chairman, that concludes my statement. I again want to point out that we have many problems that you and Mr. Railsback are aware of. We still are overcrowded. I share with you many of the sentiments you expressed in your opening statement and I assure you that we will continue to work very closely with you and your staff in trying to more effectively and efficiently operate the Federal prison system in the future.

Mr. KASTENMEIER. Thank you, Mr. Carlson. Congressman Railsback and I do have several questions.

I take it from your testimony really there are two issues: One is the difficulties with the Youth Correction Act and your own recommendations either for change or repeal. And I take it it goes not only to several things that you mentioned but also to management problems it imposes on the Bureau of Prisons and your institutions.

Of course, the other question is the fact that the Youth Corrections Act is in fact law today, and to the extent that it is present law and we have not yet amended it, to what extent are you complying with the law and the purpose of the law and whether or not the new policy should be enunciated through legislative change is another question. But I think both questions are valid and I think your criticism of the act insofar as indeterminant sentence is concerned, insofar as distinctions between persons committed for some form of incarceration or treatment who are in a similar situation, distinction to be made sometimes is lost, as you pointed out, and other problems.

Nonetheless, the existing act does contemplate placing a certain burden on you to make a distinction. I would think that—and I gather you have to agree complied, that is to say it is your argument that while the decision in *Brown* v. *Carlson* was enunciated, that it can be accommodated by transferring persons sentenced under the Youth Corrections Act to another facility where separate facilities for such persons are maintained within the context of a larger prison population.

And you have also, I think, insisted that the word treatment as used in the act is diminishing in importance and that opportunities for rehabilitation have been increased in the system, and that treatment was largely a failure and, therefore, as long as opportunities—rehabilitative opportunities exist in these institutions, that that satisfies the act. Is that more or less your position?

Mr. CARLSON. Mr. Chairman, there was a decision, as you pointed out, in this district. I should point out that there have been other decisions in other districts which go in the opposite direction. So, we are left, frankly, without any real direction in terms of the Federal judicial policy.

There have been decisions in the central district of California which go totally contrary to the Judge Doyle decision here in Wisconsin. So, I think you can understand the dilemma again we're in where we don't have a clear-cut policy.

Frankly, I hope this issue is raised to the appellate court level and perhaps, necessarily, to the Supreme Court level for a decision, because we are now caught in a situation where in some districts such as Wisconsin we have one opinion but other districts, Colorado and California come to mind in particular, we have precisely the opposite opinion.

The act hinges on two words or three words insofar as practical. The act says that we should separate youthful offenders from adults insofar as practical, and we believe and our counsel believes we are adequately meeting that part. Obviously, Judge Doyle in this district did not agree with that, and I can understand his perspective. He's a, you know, a very learned judge and a judge that I admire personally very much. But again, it points out the dilemma that we have.

We have 2,800 offenders today under the Youth Act in our system roughly 10 percent or a little less than 10 percent of our total population. We could create five separate institutions, 600 each, roughly, and we could move them all, the Youth Act offenders, to those six institutions and be in full compliance with the law. The problem that presents, however, is that these defendants would then be moved far from their families. The youngsters from Wisconsin, for example, probably wouldn't stay in Wisconsin. They may have to go to Kentucky or West Virginia.

Mr. RAILSBACK. May I just interrupt——

Mr. CARLSON. Certainly.

Mr. RAILSBACK [continuing]. To ask you this, in the light of—in the light of what you just said. It's my understanding that the amendment that was adopted not only talks in terms of foster homes or community-based treatment facilities, but also stays as close to their home as possible. So, I'm not sure that you have—in other words, you have just raised one point that I intended to pursue when the chairman is through asking his question, I'm going to——

Mr. KASTENMEIER. I'm going to yield to Mr. Railsback on that point.

Mr. CARLSON. Fine.

Mr. KASTENMEIER. And I think it's timely to pursue that.

Mr. CARLSON. It is.

Mr. KASTENMEIER. Mr. Railsback?

Mr. RAILSBACK. Let me say at the outset, Mr. Carlson, that I fully believe that the Federal Government has done a much better job in at least recognizing the problem than probably a lot of State or local authorities. And, you know, I'm aware of that. But as you know, even the Federal system has been criticized. And, for instance, there are allegations after investigation that many of the facilities which you have contracted with have really not done a very good job of at least providing us or you or the Federal Government with an opportunity to carry out what really was our intent in passing the juvenile justice amendments.

What I would like to ask, though, and I think could be very helpful to us because some of these involve allegations that appear to be discrepancies from the information that you have given to us. I wonder if it would be possible for you to give us a record of the offenses for which the various juveniles have been committed. And I don't—if you can't do that now——

Mr. CARLSON. I have that with me.

Mr. RAILSBACK. Do you have it by breakdown?

Mr. CARLSON. Yes, I do.

Mr. RAILSBACK. Well, let me just read this list.

Mr. CARLSON. Sure.

Mr. RAILSBACK. And then you may be able to give us some other information.

All right, I was kind of interested in getting a record of the offenses, the distance from their homes that the juveniles are committed, how many are in foster homes. Now, in your testimony I believe that you said one-third are now either in foster homes or community-based treatment. The allegations contained in this national prison project criticism is that only one—only one juvenile has been committed to a foster home. So, I want to know if that is inaccurate. In other words, are there more people that have now been assigned to foster homes? How many altogether?

Mr. CARLSON. There is only one at the present time in a foster home, per se, but the rest are in community-based facilities.

Mr. RAILSBACK. I couldn't hear that. How many have been assigned to a foster home?

Mr. CARLSON. There's only one in a foster home, per se; the others are in community-based.

Mr. RAILSBACK. See, that's why it's a little bit misleading when you say that one-third have been assigned to foster homes for community-based treatment if in fact only one has been assigned to a foster home.

I wonder if you can give us the distance from their homes where they are confined, and then I wonder if it would be possible to give us

81

kind of a breakdown. I've asked you for the record of offenses and then kind of a breakdown by racial background—in others words, do we have a disproportionate number of native Americans or how does that figure out?

Mr. CARLSON. Yes, we very definitely do have a very disproportionate number of native Americans. The reason, however, is that any offense which is committed on an Indian reservation, per se, is a Federal offense. The State and local jurisdictions both do not have the authority, and, secondly, they very frequently do not exert their authority when they do have it handling those native Americans. So, our population is very disproportionately—very disproportionate in reflecting the native American population.

I'll be glad to provide that for the record. I have the offenses, Congressman Railsback, but I don't have the actual breakdown by distance from their home.

Mr. RAILSBACK. Could I ask you a very general question that bothers me as much as anything, and this may not be your—within your responsibility. But, I'm very curious, does—is anybody trying to get a handle on how many juveniles—juveniles may be incarcerated in adult facilities? I really could not get that information.

Mr. CARLSON. The juvenile justice section in Law Enforcement Assistance Administration is trying to get a handle on that. They have a study, as I understand it, currently underway on a national basis trying to get an adequate definition of the number of juveniles in custody.

The reflection I give—the number I gave, of course, are just those that I have responsibility for, the 161.

Mr. RAILSBACK. All right, let me just ask you very quickly, to try to capsulize if you can. What happens to a Federal juvenile that's accused of a Federal offense, say that he's accused of a Federal offense in Madison, Wis. or Moline, Ill., where are they detained? How long does it take for it to become operative to shift them away from, say, an adult facility? Can you give us——

Mr. CARLSON. Congressman Railsback, they would be housed prior to their appearance before the court or the magistrate in the local juvenile detention facility, wherever that would be. We would contract in this county, I suspect, with the county juvenile detention facility, wherever it may be.

Mr. RAILSBACK. Do you pay them——

Mr. CARLSON. Yes; we do.

Mr. RAILSBACK. Do you reimburse them for that?

Mr. CARLSON. We reimburse them on the per capita cost for that period of confinement.

Mr. RAILSBACK. Is there a requirement that they not be detained with adults?

Mr. CARLSON. They would be separated from adults, that's correct. And in most counties that is the law and that is the practice. I know it is here in Wisconsin. I just had an opportunity to visit a very excellent jail here in Madison this morning, and I know there is a separate——

Mr. RAILSBACK. What if it's not the law of the particluar jurisdiction?

Mr. CARLSON. Then—well, our law, you know, the Federal law is very clear that we can't confine where there is comingling. And if it comes to our attention, obviously, we're going to take steps immediately to remove that juvenile.

And the Federal court, of course, has overview. I think we should point out that the juvenile is going to appear before a Federal judge for a magistrate—Federal magistrate, and I think that it's fair to say, Congressman Railsback, that the Federal judiciary are well aware of the intent of the law and insist that the spirit and the letter of the law be maintained to the fullest extent.

Mr. **Kastenmeier.** What does the term "commingling" mean? That is to say, obviously, they may be separate for some circumstances and not for others?

Mr. **Carlson.** As we interpret it it's total separation in an institution.

Now, I realize that there are in some situations, there may be opportunities for them to mix in certain parts, but that's the interpretation that we have made.

Mr. **Kastenmeier.** Very often these detention facilities, prior to being found delinquent, are in fact jails?

Mr. **Carlson.** They are in many jurisdictions, but they're separate units in the jail.

Mr. **Railsback.** Can I just ask one more question?

What are the Bureau's policies and how many personnel are assigned to the monitoring of State or local contract facilities? In other words, what kind of a job are we doing? How many personnel are they assigning full time, or part time, or what?

Mr. **Carlson.** Congressman Railsback, we have 50 community programs officers that are scattered geographically across the country. We have one here in Madison, Wis., whose sole responsibility is in this particular State to monitor our contracts for juveniles and for adults who are in halfway houses and local jails. And that's a full-time responsibility of that person.

In the West, of course, the community programs officer frequently has several States because of the small number of people in Federal custody.

On the east coast, well, we have some States who will have three or four community programs officers because of the large number of Federal offenders in custody.

Mr. **Railsback.** Thank you.

Mr. **Kastenmeier.** Congressman Railsback mentioned the separate situation confronting native Americans because—particularly because of the Indian reservation problem in Federal offenses. Has the Bureau developed any alternatives that would place such juveniles closer to reservations or closer to Indian homes or in other respects attempted to meet those particular problems?

Mr. **Carlson.** Congressman Kastenmeier, I feel we have tried in every way possible to work with the local community leadership in terms of utilizing whatever programs and facilities they have available.

I think the problem, however, is there simply has not been the resources provided on many reservations or areas near reservations to develop adequate levels of local programs. But wherever there is a program available, we certainly contract with that program.

Mr. **Kastenmeier.** It would seem in both the case of juveniles and certainly certain youth offenders that you would have more flexibility in locating such persons close to homes as close to their families because you do not necessarily—in fact some cases you may not place them in the several large Federal prisons. And if in fact you're placing them in other community alternatives, facilities and apparently not foster homes except in the single case, you furthermore indicated that the cost is about the same, $37 a day, notwithstanding an institution or community facility. I do not understand why you have not used the community facilities and other alternatives more widely than using institutions as an alternative.

Mr. CARLSON. Let me comment, first of all, on a foster home situation. I think it's safe to say that throughout the country there is a decreased use of foster homes generally for the older juvenile offender. We're not talking about the 11-and 12-year-old youngsters that obviously should be in a foster home. Those we deal with essentially, as I recall, they're virtually all 17-, 18-year-olds, some up to 21. And that's really not the type that foster homes are available for.

Mr. RAILSBACK. Could we get their ages, too?

Mr. CARLSON. Yes, sir, we can certainly provide that.

In terms of the number we have in community halfway houses or community treatment facilities, Mr. Chairman, we use those facilities whenever they're available and the contract will accept them. We find, however, that some of our contractors simply will not accept some of the more difficult juvenile offenders.

I think you have to recall that the Federal judiciary, I think, does an excellent job of trying to use alternatives to incarceration. They use probation as the first resort, they'll try any other facility in the community as the second basis, and only out of desperation when these programs simply don't work will they commit to custody.

So, I think it's also safe to say that the Federal judiciary has already explored in most cases the alternative issue. And when they commit to custody, we simply have no alternative other than to find an institution, because the community resources won't accept these people—these youngsters.

Mr. KASTENMEIER. Turn to a different question. Is it your position that juveniles ought to be reevaluated in terms of treatment when they're 18?

I say that because you mentioned a couple of cases where obviously the individuals have deteriorated and they're 19 or 20 years old and they are not, in terms of society, they're not juveniles, they're probably dangerous offenders of one sort of another. Is it your view that there ought to be some sort of review of such cases for adjusting their status in that respect?

Mr. CARLSON. Yes, I think so, Congressman Kastenmeier. I certainly feel the law itself is a very good law, but I would just suggest that perhaps the sentencing court after a certain period of time should have the option, or the opportunity, of reviewing the status and determining whether or not this person truly is a juvenile. I think we would agree that a 20½-year-old youngster with a long history of aggressive behavior is not the classical definition of society of what a juvenile delinquent really is and how that person should be handled. And that's the dilemma we're in where the two cases that I've cited that we have in Butner. I only cited those to point out the real problems we have in trying to administer a law such as the current Federal law.

Mr. KASTENMEIER. Well, you presently have a policy of having YCA units in larger institutions. Is that particular policy under attack or under any court suit or attack?

Mr. CARLSON. Yes; there is currently litigation at the U.S. district court in Denver, Colo., on that very issue. We now have 18 of our 39 institutions that have specialized housing units where the youthful offenders are housed in different—in separate units from their adult counterparts. Admittedly, this is a compromise on our part. We feel and our counsel feels that this meets the intent of the law. It is being litigated and thus far there has not been a definitive response by any U.S. district court on that issue.

Mr. KASTENMEIER. Of course, I take it you're defending your policy with all—with all the forces at your command. Should you lose that particular type of case, what alternative do you have? What would you then do with respect to the Youth Correction Act?

Mr. CARLSON. The final result may well be that we'd have to establish five or six institutions and have them totally for youthful offenders. I think that would be disservice to most youthful offenders, however, because it would move them so far from their homes that it would negate the positive aspects that might result from housing them all together.

In addition, Congressman Kastenmeier, I want to point out that the court that uses an adult sentence of, say, 1 year for a 19-year-old would mean that that 19-year-old who the court feels is more treatable is less criminalistic would then go to an adult institution. Whereas, a 21-year-old sentenced by the next judge under the Youth Act would be handled separately. So, we really have a dilemma here of how to try to operate a system with some equity. I just want to point that out to you.

Mr. KASTENMEIER. You've indicated some cases who originally were handled as juveniles but who have become as an age assaultive and difficult and have created other offenses.

How about Youth Correction Act offenders? Do you find a certain percentage that you regard as difficult to handle from a behavioral standpoint? In other words, are you—find yourself in a position of second-guessing the judge as far as persons designated for special treatment?

Mr. CARLSON. Let me give you an example. I hate to use case illustrations, but I think they are graphic descriptions of the problem.

We now have a 29-year-old defendant in custody serving a 40-year Youth Corrections Act sentence, which means he's going to be in his forties or at least late forties before he's released. And I think it stretches anyone's imagination to think of this 29-year-old person today who—it's a murder charge, by the way, with a prior—long prior history of aggressive behavior. I don't think anyone would define that individual as a Youth Act offender. But, yet that's the way the court sentenced and that's the way we have to try to interpret the law.

Now, that's the most glaring example I can think of off the top of my head, but it points out again the dilemma that we have of trying to deal with that person as a youth and then a 19-year-old with a 1-year sentence as an adult. It just doesn't make any sense.

Mr. KASTENMEIER. Thank you.

Mr. Railsback, do you have further question?

Mr. RAILSBACK. I just have one other one.

I wonder if it would be possible to give us the list, not for the record, not for publication, but the list of the names and locations of the 161 persons, and then, you know, we have—I'm just suggesting that maybe we would want to contact some of them to get their views on the treatment and so forth.

Mr. Carlson. I think it would be very helpful. I would certainly encourage the committee to do so.

Mr. Railsback. OK.

Mr. Kastenmeier. I have one further question on Youth Correction Act offenders.

Under your policy the way you handle them, can they consent to be placed in an adult prison population or in the facility which basically they're not treated any differently than they would be if they were adults?

Mr. Carlson. Congressman Kastenmeier, we do have that, particularly at the Oxford institution, in light of the decision, I believe Warden Fields has 13 Youth Act cases that have very specifically said they want to stay at Oxford and not be transferred to another institution. These are people who are from the State of Wisconsin, who are involved in programs at that institution, and I have to say in all candor that the Oxford institution, I think, is as good as any facility that we operate and perhaps as good as any institution of the type in the country.

Mr. Kastenmeier. Granting that, what measures do you take to assure that that consent is indeed voluntary and informed?

Mr. Carlson. I'll ask Warden Fields to describe the consent procedure.

Mr. Kastenmeier. Warden?

Mr. Fields. Thank you, Mr. Chairman.

What we do is interview each—we interviewed each man at the facility and if he wanted to stay there he signed a—what we call a waiver of consent to stay with the thought in mind, and we tell him that at any time that he wants to leave the Oxford facility and go to an all-YCA unit, that we would certainly transfer him there.

And we keep track of these men by meeting with them a minimum of every 60 days and we have had some who changed their minds once they have completed their programs, that wanted to move on to Texas and other places, and we have made arrangements for their transfer.

Mr. Kastenmeier. What sort of options, in fact, do they have? You mentioned Texas, what facility there?

Mr. Fields. It just depends on the part of the country they're from. The one man in particular went to Texarkana, Tex., and his home, I believe, was in Dallas or right out side of Dallas. So, after he completed his college program we transferred him to Texarkana.

Mr. Kastenmeier. The transfer would be to an institution which would have YCA units and it would be as close to his home as one could find such an institution, is that correct? Is that the policy?

M. Fields. Yes, sir, that's correct.

Mr. Kastenmeier. Thank you.

We have no further questions and we appreciate your appearance and your help this morning.

Mr. Carlson. Again, I appreciate your interest in support of our problems and understanding of some of the dilemmas that we have. Thank you.

Mr. Kastenmeier. We have next as our witnesses, and I wanted to greet—representing the Youth Policy and Law Center here in Madison, Wis., Mr. Richard J. Phelps, executive director; and sharing the panel with Mr. Phelps from Menominee Legal Defense or Offense Committee, Keshena, Wis., Phyllis Girouard and Louis Hawpetoss, both attorneys, one an attorney and one who practices as a tribal attorney.

I might add for the benefit of those here that others, including the National Prison Project, would in due course like to testify. They will not be here today, but they will have an opportunity either to submit a statement for the record or in a subsequent hearing present their testimony in person. The National Prison Project has been among the national groups most deeply interested in the general question that we're taking up today.

Mr. Phelps?

## TESTIMONY OF RICHARD J. PHELPS, EXECUTIVE DIRECTOR, YOUTH POLICY AND LAW CENTER

Mr. PHELPS. Thank you, Mr. Chairman.

Congressman Kastenmeier, Congressman Railsback, staff counsels, my name is Richard J. Phelps and I'm the director of the Youth Policy and Law Center and I appreciate very much the opportunity to appear today.

I'm by no stretch of the imagination an expert in Federal corrections. I have been requested today to provide information on how the State of Wisconsin handles juvenile offenders and to provide that as a context for your deliberations on the Federal system.

My presentation really is a three-part presentation: What Wisconsin is currently doing with delinquent youth; what further efforts Wisconsin is undertaking to reduce correctional facility population in our State and what problems are encountered in developing alternatives to correctional facilities.

As of mid-November Wisconsin will be operating virtually a new juvenile justice system.

Chapter 48 is the chapter of our statutes that controls the juvenile justice system as referred to as the Children's Code, generically, and I assume, for purposes of this testimony, that that law is in effect now.

I think it might be helpful at the outset to have some cursory understanding at least of how the system in Wisconsin functions. If a child is brought into court and found guilty of a crime the judge can't take jurisdiction by judging that child delinquent. If a child is brought into juvenile court and found to be in need of a special kind of care, under certain categories, that child is adjudged to be a child in need of protection or services.

After that adjudication the judge upon the recommendation of a social services agency makes a placement decision at a hearing called the dispositional hearing.

The legally preferred treatment of minors in Wisconsin, the legally preferred disposition is in their own home. It's a statutory presumption that wherever possible a child will be treated in their home and that applies to delinquent youths as well.

This is—this in theory can be coupled with probationary services, mental health counseling, employment counseling, special educational programs, whatever the community has to provide.

A little later on in my presentation I will indicate, however, that sometimes a lack of monetary commitment to those programs undercuts the law's intent.

If the child is to be removed from home, there are a variety of options in our State. And I think maybe an understanding of the terminology will help.

Foster homes in Wisconsin are licensed to handle from one to four children; group homes, from 4 to 18 children, and child caring institutions from 9 or more. As of September 1, 1978, there were roughly 5,399 children in 4,500 licensed foster homes; 699 in 145 group homes, and 1,135 children in 35 institutions.

These are not all delinquent children. This, however, does not include developmentally disabled children who are in colonies, nor does it involve 60 children in mental health institutes.

In addition to those facilities and resources, Wisconsin operates two secured correctional facilities that handle between 3 and 400 children apiece. Only these facilities can operate locked units. They are the only secure facilities in the State and the facilities run by government.

Most of the other alternatives are operated by private agencies and must be nonsecure in nature.

It's important to note in understanding Wisconsin systems the delinquents and nondelinquents can be placed in the same facilities with the exception of the two secured correctional facilities.

In other words, the treatment center that holds 50 children, 20 may be adjudged delinquents, the rest may be truants from school, runaways from home, children with emotional problems, abused children, abandoned children, and so forth. However, in the State of Wisconsin absolutely no commingling is allowed with adults and minors.

There's really been two types of efforts in Wisconsin recently to reduce the population at the two secured correctional facilities that I have been talking to and make much more of a commitment to a community-based care. And definitely what they're trying to do in Wisconsin, as in the rest of the Nation, is to avoid institutional care and to treat children as close to their own communities as possible.

One of the areas of reform of characterizing procedural reform with the new Children's Code, the categories of children that can be placed in the secured facilities is restricted even further in Wisconsin.

In the past runaways, truants from home could be placed in secure facilities as delinquent children. That was eliminated from the statutes in the past.

In 1975 or 1977 another addition was added that qualified commitment to the correctional facilities by saying that you had to be over 12 or older in order to be found delinquent. The 1978 revisions remove all ordinance violations, all civil forfeitures and add the following criteria that a judge must find to commit a kid to a secured facility:

The crime committed must carry a penalty for an adult of 6 months or greater; the child must be found to be dangerous and in need of secure custodial treatment, and the placement must provide the least restrictive means necessary to assure the child's care and treatment.

Behind that procedural reform, however, is a need in Wisconsin, and I think the legislature is going to be looking at in the coming session, is a resource reallocation, because it's not just a procedural problem in our State.

Wisconsin has begun that process of deinstitutionalizing children by closing Kettle Morraine School for Boys in 1974, Oregon School for Girls in 1976, Goodland Camp for Girls in 1978, and relying more heavily on community alternatives.

That left some overcrowding, however, in the two facilities that we do have, and that's what the legislature will be facing in the coming session.

**Mr. Kastenmeier.** Was the closing of these several institutions, was it a policy decision to move away from institutionalization or did it happen to save money? What factors went into the decision in its entirety?

**Mr. Phelps.** I think it's expected utilitarian arguments of cost effectiveness were made in all of the closing decisions. But I think that really behind those arguments and these groups of our ilk tried to make the arguments on the substance of the basis of community care. And there's a growing awareness I think, Congressman, that institutional care is counterproductive and many people view it as barbaric and that it does everything in the reverse.

If you want a child to return home and function, you don't remove him from the home. If you want him to function in the community, and they will go back to that community you can depend on it, you don't completely sever their ties to that community, obviously. We found that the institutions don't provide the kind of care that they promised they could provide, and we also found that in the cost area that the institutions are not cheaper than community-based care and that, in fact, most community-based care wins the cost effectiveness argument.

There is a trap in that, however, and that is that you have to argue for quality community-based care, I believe, and I think that if—if you're going to deinstitutionalize children that money should not be placed in some vague notion of tax relief or general public revenues. I think you have to recommit it to community-based care.

I think Congressman Railsback had a very good question about the cost of foster care. In our State, at least, they're not comparable costs. Institutional care is much more expensive than foster care. It's about $200 a month, Congressman, in this State for foster parents.

However, I think that the direction we're trying to argue the State should take, and the Federal Government is more specialized foster care.

If you're going to spend $36 a day or $13,000 a year, and in Wisconsin it's closer to—well, probably $16 or $17, I would guess, you may be better off in some cases paying a foster couple that money and offering support services and they do nothing but provide care for that child and supervision for that child. And corrections officials are beginning to concede more and more that security and public safety are not attached to the physical plant, it's attached to the program. And if you have adequate supervision, the community is as well protected as if you simply throw a fence around and allow furloughs periodically in and out of the plant.

So, I think that foster care is less expensive now. Some kinds of foster care ought to be comparably paid for with institutional care.

Some of the additional things that Wisconsin has to face along those lines is we presently have an incentive system that rewards commitment. Local communities get a number of dollars for social services for community-based care. They distribute that money. If they commit a child to the correctional facilities the State pays the entire bill.

Well, obviously the incentive is when in doubt commit a child to the correctional facility and hope they will parole the child to an alternative care facility, because then the State pays the entire bill. If you place them directly in the community-based care facility, the county pays. That's a State budget issue that Wisconsin has to deal with.

Other areas where Wisconsin's made a commitment, however, to community-based care is to prohibit the zoning out of group homes out of neighborhoods and to increase the amount of reimbursement for alternative care such as foster care.

There's an embarrassing typographical error on the third page I draw your attention to, and I'd like it corrected in the record. Under Sub B—excuse me, I'm getting a little dry.

In the second paragraph, second sentence refers to secure reimbursement rates were made uniform from county to county. That's foster care reimbursement rates were made uniform from county to county and increased by approximately $7 million in the State of Wisconsin.

Mr. Kastenmeier. The record will disclose that correction.

Mr. Phelps. Thank you, sir.

Mr. Kastenmeier. I don't doubt anything that you have said. I wonder, this may be pretty far afield, but talking about people in the same age bracket what this says about—in other circumstances, not in terms of corrections, sending young people away to military school or academies not for purposes of corrections, but, nonetheless, they would be in a somewhat similar situation as far as an institution separated from community and family. And if one is counterproductive, maybe the other is, too. I mean, at least you sort of leave that dangling.

Mr. Phelps. It leaves a very doubtful issue of proper Government interference.

Mr. Kastenmeier. Of course, families are entitled to send their children to military academies and other academies away from home. But, nonetheless, to the extent that institutionalization of children in another setting far from home is maybe somewhat counterproductive in the development of that youngster. There may be an analysis to the corrections problem unless it opposes these separate institutions.

Mr. Phelps. And, of course, in many—I don't have any statistics on this, but in instances those facilities are used as correctional alternatives for people who can afford to pay the bill.

We had a long debate in the revision of children code as to how far it should reach into private decisionmaking by the parents, and at least in terms of public contracted for facilities Wisconsin will not allow for voluntary placements any more and requires participation by the youth in the courts in making decisions.

Some level of participation by the youth is becoming more and more required in Wisconsin. Mental Health Act we changed the same way. Perhaps there is room in that way to affect private academies to somehow insure that at least the youth is there and has access to complain if they don't want to be there, and at least assure that they are in some sense of their own consent. But, it's a very difficult issue.

We didn't attempt to tacke it all in the children's code revision.

The last item that I had been asked to discuss are problems that we're still encountering in developing community-based care alternatives. And I've indicated the real barriers to date are financial, that continues to be the barriers. If you understaff a group home and you don't make the right kind of commitment and you're willing to pay 350 rather than $1,200 a month or whatever to a group home program, you will find that the burnout rate is tremendously high of staff.

You're asking them to work 24-hour shifts, virtually, for very-difficult-to-handle children.

We need to concentrate on support services to the smaller unit of care. That means school liaison workers that will help kids with special needs, work in and out of new school systems. Oftentimes when you're placed in a group home it's not in the same school system that you were raised. You need to have rested staff that allow adequate rest for those that are residential staff in those group home facilities.

You really need school alternatives, adequate alternatives. Many of the kids you're talking about the first time they run into problems it's in the school.

They're very threatened, they don't function well in the conventional school and the expectation of simply sending them back to the same place is not very realistic, especially in light of the fact that recent surveys have indicated that 30 percent or more of the residents in our secured correctional facilities in Wisconsin have learning disabilities, emotional disturbances, mental retardation or deficiencies in speech, hearing or language. We've got to concentrate more on skill-level development for those kids.

Beyond that we have some systemic problems in just our failure to innovate. When you're talking about group care you're talking about a variety of group care. Some group care has to be very structured because you're dealing with people that the public deserves to be protected from to some degree. And that can be done in small units. You have got to offer programs that are more open for those who simply have to work in easy transition into adulthood. But you need the options and the maximizing the options is really the key to a successful correctional system.

Some of the questions that we've discussed—I sort of had taken pieces out of the testimony and I will leave the testimony for your review.

I also refer to an additional document that if it is not in your folders, it is in your office, of testimony that I have provided to Wisconsin's committee that's studying corrections that focuses statistically on Wisconsin's problems and the profile of children that we have in our secured correctional facilities.

I would strongly encourage the Congress to continue its route of a commitment to community-based care. And I think that with the Federal Government exercising leadership in that area it's been much easier for people at a State level to say that that's the wisdom of our time. And I believe that—and I believe that that direction is substantiated by not only the data but just our commonsense understanding of how we change people's behaviors. And I would encourage Congress to continue on that path.

If, and I'm not a Federal systems expert, but I would assume that it would be more productive to study further ways of contracting for services in State systems that have adequate services already developed where you can serve a child closer to their home—probation staff that are attached more to that child's locale than to go the route of developing separate correctional institutions in five or six locations in the country, thereby creating a tremendous problem of community reintegration when the child's done.

Thank you, very much for your invitation to speak today.

Mr. KASTENMEIER. Thank you for your very useful testimony, Mr. Phelps. Your statement in its entirety will appear in the record and the reference to other materials previously submitted is noted.

I really just have—perhaps a single question or two.

You have no—you have no corollary to the Youth Correction Act in Wisconsin.

Mr. PHELPS. We did, Congressman.

And that's been recently struck.

The feeling was that the resources never were placed in position to adequately bring to life, and rather than to have its sitting on the books unused and confusing people the legislature just decided to strike it completely.

Mr. KASTENMEIER. As far as institutionalization and your interest in youth policy and law, et cetera, not merely in corrections alone but in other public policies affecting children and young people——

Mr. PHELPS. That's correct.

Mr. KASTENMEIER. I take it is across the board, for example, the deinstitutionalization of other young people who may be retarded or may be disabled or handicapped in some particular respect and attempting to reintegrate them somewhat into the community is also part of a coherent policy that you advocate, is that correct?

Mr. PHELPS. I would consider it a weakness of the structure of an organization such as ours, Congressman, in that we have to rely certainly very heavily on the ability of either the Federal Government or private organizations to fund the efforts in an area.

Much of the concentration to date has been in mental health and in juvenile justice in the type of work that we do. There is some very good local organized and developmentally disabled citizens, but unfortunately there is nothing in terms of equivalent advocacy for children at a State level. And that's by virtue of the fact of a lack of funds for that.

I think the kind of efforts that the Office of Juvenile Justice have been designing some of their moneys for, it might be wise to look into similar types of projects for the developmentally disabled. They tend to be treated completely outside of the juvenile justice or the children's court system at all.

Wisconsin, as I have indicated, have 800 children in the colonies.

Mr. KASTENMEIER. Thank you.

Mr. Railsback?

Mr. RAILSBACK. Thank you, Mr. Chairman.

May I ask how long your organization has been in existence, and could you give us a little background—I was very impressed with your testimony, but I'd like to know a little bit more about your organization.

Mr. PHELPS. About 2 years ago, Congressman, the Governor appointed a task force of 45 people to investigate and make recommendations on Wisconsin's juvenile justice system. They made recommendations about—360 detailed recommendations on how Wisconsin's system ought to change. We haven't changed our system in 25 years. Most of those recommendations did not lend themselves to brick and mortar solutions, nor to solutions that have just as their base an adding of personnel to State agencies.

Really what was needed was a change in policy. And in order to keep that document from collecting dust, money was appropriated to our organization to change State policy in the juvenile justice system arena. So, we were granted money to bring lawsuits, provide information in the legislative process, the Governor's office, Governor's staff, State agency people in order to bring about the 360 recommendations that that citizen's task force developed. That was the beginning of the center. And there are a couple of training things we're doing in developing a handbook for prosecution and defense lawyers in the State.

Wisconsin's never even had a resource manual for lawyers to go to juvenile court. Although we process in that system a tremendous number of cases. Attorneys have been operating by word of mouth. So, the second component we had was to develop that resource for attorneys and we'll be publishing that soon, also.

Mr. RAILSBACK. How many personnel—I see you're the executive director.

Mr. PHELPS. Yes.

Mr. RAILSBACK. How many personnel and so forth, lot of volunteers, too?

Mr. PHELPS. Well, we work with a number of organizations and people volunteer their time, but the center's corps is a paid staff. We have myself, an associate director, legal counsel that specializes in litigation, a policy specialist, and two clerical administrative staff. Then there is a training team of four people and the manual's project is a full-time attorney and part-time professor at the university.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. Thank you, Mr. Phelps.

[Statement follows:]

### STATEMENT PROVIDED TO THE JUDICIARY SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE

(Submitted by: Richard J. Phelps, Director, Youth Policy and Law Center)

YOUTH POLICY AND LAW CENTER, INC.,
*Madison, Wisc., October 27, 1978.*

Mister Chairman, members of the committee, although your hearing is focused on the federal system's treatment of youthful offenders, a discussion of the state's approach should provide a helpful comparison. I have been asked to touch upon three areas in my presentation:

(1) What Wisconsin is currently doing with delinquent youth;
(2) New efforts aimed at reducing correctional facility populations; and
(3) Problems encountered in developing alternatives to correctional facilities.

1. *What Wisconsin is currently doing with delinquent youth.*—As of November 18th of this year, Wisconsin begins a new juvenile justice system. The controlling chapter of the statute is Chapter 48 and is known as the Children's Code. The legislature passed a complete revision of the Children's Code in the last session. For the purposes of my testimony I will assume that the new law is in effect.

At the outset it will be helpful to gain a cursory knowledge of the juvenile justice process in Wisconsin. If a child is found guilty of a crime, the court can take jurisdiction by labeling the child a "delinquent"; or if the child is in need of certain types of care, the court can adjudge him or her to be "a child in need of protection of services." The judge, with recommendations from a social service agency, then decides what to do with the child at a "dispositional hearing."

The legally preferred disposition for all youth is treatment in their own homes. In theory, this may involve probation coupled with day services including special educational programs, counseling, employment, and various skills development programs. However, as I will discuss later, there is a lack of monetary support which often undercuts the law's intent.

If the child must be removed from the home, there are varying types of placement options to consider. Foster homes are licensed from one to four children. Group homes from 4–8, and child care institutions for nine or more. Counting delinquent and non-delinquent children as of September 1, 1978 there are roughly

5,399 children in 4,500 licensed foster homes, 699 in 145 group homes, and 1,135 in 35 institutions.[1]

In addition, the state operates two secured correctional facilities which hold about 300–400 children each.[2] Only the two correctional facilities may hold youth in locked, secure custody. Most of the alternatives are operated by private agencies and must be non-secure.

It is important to note that delinquent and non-delinquent children alike can be sent to any placement with the exception that only delinquent children can be sent to a secure correctional facility. In other words, a child caring institution may have 50 children, 20 of which may be adjudged delinquent and the others may have been abused, habitually truant from school, abandoned, etc. However, comingling with adults is not allowed in any facility.

2. *New efforts aimed at reducing correctional facility populations.*—Wisconsin is continuing a trend away from large correctional facilities. Efforts include procedural refrom and the reallocation of resources.

A. *Procedural reform.*—The new Children's Code further restricts the number of children who can be committed. In the past, delinquency included status offenders who commit acts which would not be criminal for adults (Examples, school truancy, run-aways, and uncontrollability).

In 1973 those non-criminal groups were statutorily removed from secure correctional facilities. In 1977 a qualification was added requiring that a child be 12 or over in order to be found delinquent. The 1978 revisions remove ordinance and civil forfeiture violations and add the requirement that a delinquent can only be committed if he or she has violated a law that carries a penalty of 6 months or more for adults, the child is "dangerous" and in need of secure custodial treatment, and the placement provides the least restrictive means necessary to assure the care, treatment, or rehabilitation of the child and the family.

B. *Resource reallocation.*—Hand in hand with procedural reform must be financial reallocation which emphasizes community based care. Wisconsin has begun that process. Kettle Morraine School for Boys was closed to minors in 1974; Oregon School for Girls in 1976; and Goodland Camp for Girls in 1978. Community alternative care cases increased. Group homes increased to join foster homes and child care institutions as community alternatives.[3]

In addition to last session's procedural reform there were other specific legislative actions taken which reflect an increased willingness to nurture community corrections. Foster care reimbursement rates were made uniform from county to county and increased by seven million dollars. A zoning bill was passed that requires group homes to be spread among varying neighborhoods but prohibits any given neighborhood from zoning them out arbitrarily.

The state, like the rest of the nation, is concluding that centralized corrections is counter productive if not barbaric. However, issues remain. The closing of facilities has left the remaining two correctional institutions overcrowed and nearly devoid of program capability.

3. *Problems encountered in developing alternatives to correctional facilities.*—In studying the problem of overcrowding the special committee on Juvenile Correctional Facilities has received evidence this year on problems that continue to impede the development of alternatives to correctional facilities. First of all, Wisconsin's financial incentives are reversed. For example, if a child is placed directly in a group home by a local judge the county pays the bill out of a fixed sum of state and federal social services dollars. Nearly every county runs out of money and the deficit is covered by local tax dollars. Many counties commit children to the secured correctional facility with the hope that he or she will be paroled to a group home. The state pays the entire bill for a child who has been committed as well as any subsequent after care services. Wisconsin will be considering a reversal of the financial incentives in the next biannual budget. Nearly all other states face this problem with California, Washington, and Minnesota attempting various methods to correct it.

To date, the financial commitment to alternatives has been more rhetoric than reality. Although per bed costs for community care is often billed as cheaper than institutional care, quality community care is not. Money is needed for respite staff in group homes thus allowing more time off for presently overworked house parents. Unfortunately for the children, the turnover rate for group care workers is very high. Supportive staff are needed to work transitions to and from placement with an emphasis on family counseling. School liaison workers are needed in that many of these children first begin to have trouble in life with the onset of school problems. Based in a small facility, they must attend a new school which is often unprepared for the special needs of new students. Ideally school alternatives would be available for those who are threatened by conventional school programs. It should be noted that screening at the two correctional facilities, Ethan Allen School and Lincoln Hills School, indicates that 30% or more of the residents have learning disabilities, emotional disturbances, mental retardation, or deficiencies in speech, hearing, or language.

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[1] These statistics do not include the 800 children in institutions for the developmentally disabled or the 60 in mental health institutions.

[2] These figures do not include the Flambeau Correctional Camp which is a non-secure facility holding up to 40 children.

[3] Pre-trial holding facilities such as county jails, detention centers, shelter care facilities, and run-a-way centers, are not included in this discussion because they have exclusively a temporary holding function.

Another systemic problem is our failure to innovate. We need to go beyond the usual foster and group home concepts where a kind couple takes in children. Many group homes are now professionally staffed. However, we need to develop models providing varying amounts of security and varying program emphases. We need to look more to treatment foster care where someone is not just reimbursed for cost, but paid a salary to provide foster care and work full-time with a difficult youth. Rather than $1500/month for institutional care in many cases we would be wise to hire a skilled foster parent or couple who could provide a two : one adult to child ratio.

We continue to have problems in maintaining programs already in existence. Next to finances, the biggest problem is community resistance. For example, in response to the zoning override bill, the Milwaukee City Council has been attempting to withhold money to homes not acceptable to the local council representatives. This is a zoning veto dressed in a different title. The ray of hope, however, is that community voices have reacted very strongly in support of group home survival and will likely prevail in Milwaukee. The state is improving in its ability to bring communities into the planning process on new group homes but more public education is necessary on the need for such programs and the need for each community to do its part.

There are systemic problems which impede adequate use of alternative care in Wisconsin, but they are perhaps unique to our state. And I will simply refer to you review a copy of my testimony to the Committee on Juvenile Correctional Facilities which I have attached.

It would be a mistake to stress placement services as the community alternative to correctional facilities. In-home programming is nearly always the most successful and the most neglected. Federal and state money should be directed to intensive in-home treatment programs which work with the entire family. Recent statistics reflect that most children in correctional facilities are not the most serious, last chance kids, myth has led us to believe. (For details see the attached testimony to the special committee.) Many children can be dealt with in their homes with effective community support.

Regardless of continuing problems alternate community care has improved over time and is now considered an integral part of our state correctional service system. Large correctional facilities often remove a child too abruptly from the family and community within which he or she must ultimately function. Children will return home and now often do so more alienated, angry, frightened and less skilled than when they left. Centralized corrections seldom provide promised programs and even if they did, the mere size of the facility dehumanizes the child. The facility creates an artificial environment from which few realistic coping lessons are learned. With corrections experts now claiming that security is more a function of programming than physical structure the last rationale for large secure facilities is stripped away.

If the federal system is unable to develop its own community based care system, the use of state systems is necessary. Children who violate federal law are often handled now in the state system by deferring to a prosecution of a concurrent state charge and dismissing the federal. A more formal connection would bring more resources to bear on all children within federal jurisdiction.

Mr. Kastenmeier. I'd like to now call on Ms. Girouard and Mr. Hawpetoss. Mr. Hawpetoss, you, sir, have a prepared statement, I take it?

Mr. Hawpetoss. Yes, I do.

Mr. Kastenmeier. On behalf of both of you.

Ms. Girouard. Yes.

## TESTIMONY OF MS. PHYLLIS GIROUARD, ESQ., AND MR. LOUIS HAWPETOSS, TRIBAL ATTORNEY, MENOMINEE LEGAL DEFENSE/OFFENSE COMMITTEE

Mr. HAWPETOSS. Representative Kastenmeier, Representative Railsback, counsel, we are primarily here to address the alternatives on the Menominee Indian Reservation. And I'll proceed with the statement we've prepared.

Alternatives available to youth offenders on the Menominee Indian Reservation are at this point very limited. The State is used as the primary provider of services with the exception of privately owned foster homes. The social agencies rely on the tribe and the Code of Federal Regulations courts to give direction on dispositions of our juvenile problems. Normal procedures are just the opposite in that the courts should take direction from the social agencies. This would grant the youthful offender every avenue of dispositional alternative available.

Social agencies may have had contact with the youth for many years prior to the current offense, and they may have several recommendations and numerous alternatives. The juvenile court judge has gone on record to say she doesn't have to listen to these alternatives. Although this is a statement made in many juvenile courts, the inability of the social worker to express a strong recommendation and to really think that there was a strong chance of this avenue being followed is small.

The social agencies are probably the only agencies in our area that come close to exploring alternatives available to youthful offenders. The normal route of exploration is to use State directories, research other local resources in the community, the neighboring counties, and sometimes States. Of all the alternatives available to it, the court usually uses only one avenue—final disposition and removal from the area into a residential treatment center.

The normal process that a juvenile offender goes through are basically the same as in other areas. The fact that makes our area unique is that we are in several jurisdictions. This affords young people fewer alternatives and more court exposure and the possibility of being tried differently than the average youthful offender in other areas. We are unique in that we have a Code of Federal Regulations court, which is a Bureau of Indian Affairs court. There is also the possibility of youthful offender being tried in State court, which may carry different alternatives and a completely different disposition.

The third court system available, the Federal court, which has probably the fewer alternatives available since the offense would be greater in order to be under the jurisdiction of this court. The incidents arising in our area that have come before this court have been of the most serious nature.

Alternatives in this area are not readily available because of the situation of this being a reservation and some of the prejudices that exist, so right away some of the area facilities that surround the local area are limited.

The youthful offender that has progressed through the system will go through several phases and the system will provide alternatives, right or wrong, to fit the juvenile at whatever stage he or she is.

The extended family situation is the initial alternative that the social agencies usually have available to them. Keeping the juvenile in the family circle is foremost in our traditions and culture. The avenues are many in that traditional Indian families are large. Grandparents are probably on the highest plane according to our traditional ways. Health and economic reasons play an important role in the grandparents being acceptable to the social agencies, when in fact traditionally grandparents pretty well dictate to the parents the way to raise the children in Indian culture.

In exploring the nearness of the family unit on our reservation, tradition has naturally evolved a somewhat unofficial dispositional system. If trouble is apparent in the family, aunts, uncles, cousins will come forward in the best interest of the child. Social agencies have recently picked up on this and are recommending this route, which was not normally followed. As the youth ages and if the incidents progress, he will have progressed through these alternatives, which could have meant removal from the natural parents to relatives.

If efforts have not had favorable results at this point, an alternative is an off-reservation foster home. Although there is a new concept being explored and this is a receiving home on a reservation with placement there is for four beds.

In adopting the receiving home concept, it must be explained that another avenue open to youthful offenders has closed, this being a shelter care facility which was an eight-bed facility that was a direct alternative to jail and detention. Shelter care was needed in this area because of the high incident rate. Juveniles must now sit in a segregated facility off the reservation in the care and under the control of people not understanding of their basic needs.

We'll move into the area of recommendations now.

The community we live in has many avenues to explore, with resources such as the mental health programs, 51.42 boards, and their alcoholic programs.

The Menominee Indian School District has counselors available to address basic needs in school-related problems. The Menominee Indian Tribe has also available through CETA created a probation program that deals basically with the Code of Federal Regulations court, and that's available for disposition. The probation officers are also counselors to the youthful offenders. The churches in our areas do, in some instances, offer direct services to their parishioners. Although this avenue is available, it's not normally requested.

The Menominee County Department of Social Services is probably the biggest provider of suggestions, recommendations, and referrals on our reservation and as a result, as stated before, would be the agency investigating and contacting alternatives facilities for dispositions on and off our reservation.

The Menominee Tribe contracts with the State of Wisconsin for services in residential treatment facilities. These facilities range from boys' schools, girls' schools, evaluation centers, consultation service, holding facilities, detention facilities, and are all based off the reservation, some at great distances from the reservation. With the exception of local foster homes, all of these facilities are also off the reservation and are great distances, thus creates a huge threat of destroying family unity.

The avenue of group homes for boys and girls has been addressed in our area, but due to numerous problems established facilities have closed and have left a void. No attempts have been made by any local agencis to open up this important channel of disposition. The effort of treatment prior to the final disposition of removal from the area was satisfied in placement of youths in group homes in the area. The homes were staffed by traditional Indian people who chose to live traditional lives and expose the children to the traditional way of life and the Indian value system. The children were assisted in making the necessary steps to return to tribal community living by people understanding the problems faced by Indian youth.

The concern of the community and the social agencies at this moment appears to treat this area with low priority. The use of State facilities, such as boys' and girls' schools, have been the most used by our court system. The two State schools available are at great distance from the reservation and are completely foreign to the Indian youthful offender.

State facilities have contracts with the Menominee Tribe for provisions of services to youthful offenders. Most youths instead of being helped are ususally in some form institutionalized. The State directs its efforts toward uniformity which goes in most ways against our tribal ways of life.

The State agrees with the problems facilities expose Indian children to. Sentences usually are reviewed more frequently than those of the average youthful offender, and efforts are made to return Indian youth to a tribal setting as soon as possible. The Federal system of disposition in our area has not been explored because of the less serious nature of the offenses committed in our area.

The Menominee Court of Indian Offenses only handles misdemeanor cases. The few incidents of use of the Federal system has resulted in the offender being moved such a distance that contact has virtually become nonexistent.

A young girl with a lot of potential that committed a serious offense was removed to the point of having no contact with her family, which also goes contrary to our traditions. We would very seriously question what this system has to offer and would recommend the possibilities of strengthening the resource and treatment in our immediate area.

The building up of alternatives in our area and the agencies' ability to recognize the need within our Indian community is foremost in our minds. Efforts in the youthful offenders area should be on the top of the list of priorities in all our related fields. Whoever suggests or thinks the problem is minute is a fool. Good government is being guided by the youthful approach to responsibilities, therefore we must take this direction to be realistic in our approach to help guide these young people over the most important phase of their life. Alternatives must be carefully considered to fit the best interest of the youths, even if those alternatives differ from area to area.

Indian youth, because of complications, need direction from their elders and the resources available in our immediate area. The system that takes the person from the problem does not treat the problem, only gives it to someone else. Historically, our tribe has always chosen to deal with our own problems.

We also consider young tribal members our most valuable commodity as our leaders of tomorrow, and they must help us find ways to secure our infinity.

This is a statement by myself.

Mr. KASTENMEIER. Thank you, Mr. Hawpetoss, for that statement. That's very, very useful.

As I understand it, most of your statement deals with the youthful offender—Menominee or Indian youthful offender—and his or her relationship with the State's system. You indicate as far as the Federal system is concerned that principally any offenses that might be dealt with are, in fact, misdemeanors and there is not a serious problem in that regard. But in the infrequent case of a serious offense involving an Indian youthful offender in the Federal system, really the Federal system doesn't have any particular way of dealing with it except very often distant removal of such a person from his or her background or family.

This question was also raised, nationally. And even though the cases are few, they may require a very special understanding. To that degree your testimony is very useful and is supportive of that by others including—I guess it was Walter Echohawk who had written Mr. Carlson in that past. So, the question has been raised as an issue.

Mr. Railsback?

Mr. RAILSBACK. I want to congratulate you on your testimony and also echo what the chairman has said, which is that there are many others that are concerned about the location of where certain juvenile offenders have been placed which may not, you know, in many cases may not even be their State of resident where they are from.

So, I think it's kind of a—apparently kind of a pervasive——

Mr. HAWPETOSS. I'd like to comment on that very area. When we were approached we went into the community and tried to find particulars on what avenues the girl went through. When, in fact, we approached her mother at that point the mother didn't even know where the girl was and still to this day doesn't. I approached a brother; he said that she had been moved to California and since has been moved to North Dakota, but he doesn't know the town. He would have to write to his father in Seattle to get the name of the town.

So, you can see the complications that are added to removal. It just breaks up the whole family and we would have very, very serious questions about that.

Mr. KASTENMEIER. Thank you—all three of you on the panel, Mr. Phelps, Ms. Girouard, and you, Mr. Hawpetoss—for your testimony this morning. Appreciate it.

Ms. GIROUARD. If it please the panel, there are a few additional comments I would like to make in addition to Mr. Hawpetoss' statements, mostly amplification on comments that have been made previously.

In particular, in response to a question I can't remember now which one of you asked it, about the disproportionate number of native Americans in the Federal corrections institutions. Mr. Carlson responded that that was because all offenses committed on the reservation are Federal offenses and would result in the youthful offender being put into the Federal system.

As Mr. Hawpetoss has mentioned in his statement, that is not accurate. That is not true. Most every tribe has a tribal court system.

The system on the Menominee Reservation was called a Code of Federal Regulations court. It's a Bureau of Indian Affairs court. It's a Federal court.

In fact, although the law there is not the Youth Corrections Act, it's a separate law in the Code of Federal Regulations. That means that each tribe has jurisdiction to try tribal members. The jurisdiction on the Menominee Reservation is at this point limited to misdemeanors. That will not necessarily be true in the future. That is not necessarily true on other reservations.

That then means to the extent that native Americans are put through the Federal system, that is often a calculated choice on the part of the Federal authorities. It does not mean that they have to go through the Federal system with all of the attended problems then being put into institutions far removed from their homes.

There is often the preferred alternative of dealing with tribal remedies, and that is important in light of the sovereignty of Indian nations. That sovereignty has been recognized in two very recent Supreme Court decisions: *United States* v. *Wheeler*, *435* U.S. *313* (1978) and in *Santa Clara Pueblo* v. *Martinez*, *436* U.S. *49* (1978).

In fact, in *Wheeler* it involved the disposition of a criminal case and they indicated that very distinctly the tribal court system is a separate court system to such an extent and is a sovereign system that double jeopardy did not attach to an individual whose tried in the tribal court.

Mr. **Railsback**. May I ask both of you what your experience has been in respect to foster homes? In other words, we know that on the Federal level now they really are not using foster homes, and I have also heard others be critical of them. You apparently have in Wisconsin. I'm kind of curious what your experience has been.

Mr. **Phelps**. In terms of specifically the native American community?

Mr. **Railsback**. Generally, or both, you know.

Mr. **Phelps**. Part of the problem in the past, as I understand it, and I'm probably not the first to ask this of the panel, but part of the problem in the part of foster care in the native American communities were some of the standards for licenses for foster care and their concept of space—how much space you have to acquire for a child before you can get a license, you have to have a separate room, you have to have all sorts of—there are requirements in those regulations in some States, maybe still in Wisconsin, that disqualify many of the people in the community——

Mr. **Railsback**. Yes.

Mr. **Phelps** [continuing]. Which end up with a lot people placed out of the community.

Foster care in general I think is—I mean Wisconsin has a lot of experience——

Mr. **Railsback**. Yes.

Mr. **Phelps** [continuing]. Experience with it, and I'm not sure where to focus on that problem. I think the belief is increasing—I don't think that the people are giving up on foster care. I disagree—if that was the implication in Mr. Carlson's testimony—I think that they're refining their notion on what foster care can do and the limitations of foster care, perhaps. But I think Wisconsin's—I would project Wisconsin's relying more heavily on short-term foster care and to avoid the long-term switching of kids from place to place.

One of the problems in foster care is if you don't have a system of placement accountability—I've had clients who in 7 years were in 14 foster homes, and they don't remember the names but maybe six of the people they've lived with. Well, that's a terrible situation and, obviously, you have to have more accountability in that decisionmaking. But if you do you can make a foster care system substitute for much of the institutional care system we have now.

Mr. **Railsback.** Let me just ask one further question. What's the difference as far as your experience between a group home with a larger client—resident rate—than the foster home?

Mr. **Phelps.** Some kids it's much more threatening and difficult for them to deal directly with an adult as their primary relationship. They've had a history of tremendous disasters in their own homes, or in foster care, of conflict with adults.

In some kids, especially the older kids, it's a better environment where they can relate to six or seven of their peers as their primary relationships and yet have some adult role model available.

Mr. **Railsback.** So, the group for one would be better.

Mr. **Phelps.** For some cases.

Mr. **Railsback.** For the older——

Mr. **Phelps.** Not all the older kids.

Mr. **Railsback.** Yes.

Mr. **Phelps.** But that's one of the factors to consider. I guess that's all——

Mr. **Railsback.** I appreciate that.

Mr. **Hawpetoss.** I think I can shed some light on this in that for 7 years I was a group home director myself for the Thunderbird Ranch, which is now closed.

The way we related and the way the kids came in—they came from all over the State—in fact from all over the country. We were basically set up as an Indian foster home with a strictly—a traditional way of approach to do that—to dealing with the kids, in that we dealt with kids from the ages 12 until 18.

This avenue has been closed. It's a very needed avenue in that it goes into a little bit more than foster care, and we had a rural setting which was like 17 miles removed from the reservation.

The good point about that was that it removed—well, this—removal wasn't a good point, that they removed the kids from the home, but they still had that contact with the community and the directors and any other community activity that was available to them that would have been of Indian nature they were allowed to attend.

Mr. **Railsback.** So, it was close enough.

Mr. **Hawpetoss.** Right. This goes with all our traditions, you know, we tried to make the child—basically it would be the point he would be removed from his home, he would probably try to make him to be in the group home, in that same time keep the contact with his own home.

Mr. **Railsback.** OK, thank you.

Mr. **Phelps.** Could I simply get one point to the difference between the group care and the foster care as it is presently constituted, and that is, I think, a misconception that our system has, and that is, that we attach social services support to a group home we tend not to in a foster home because of the perceived differences in the function.

So, maybe some of the distinctions in those two programs could begin to change over time if support staff were attached to foster care as well as group care. Now we tend to think of treatment-needing kids going to group care, non-treatment-needing kids going to foster care.

Mr. **Railsback.** I see.

Mr. **Kastenmeier.** I want to thank all three witnesses this morning. I think, actually, the comment by Ms. Girouard is a somewhat unsettled part of the law insofar as some of us know in terms of the interrelationship of tribal courts and other alternative forums. Even Legal Services Corporation attorneys have difficulty when they handle that difference. But clearly this is an area we ought to involve ourselves in on several counts, including the one we're talking about this morning. And I would like to invite your further comment at a later time, generally on tribal court jurisdiction and disposition of matters, even as a member of the Interior Committee, I'd be interested in that. Thank you, Ms. Girouard.

I want to thank all three witnesses. We have one more witness this morning I'd like to reach.

Mr. **Hawpetoss.** Thank you.

Mr. **Phelps.** Thank you.

Mr. **Kastenmeier.** First, I wanted to note that Prof. Frank Remington and a couple of his colleagues are here, not as witnesses, but who have among certain others here in the audience this morning a very long and expert interest in the matters we have taken up this morning. And I appreciate them being here.

I wanted to ask Attorney Michael Davis to come forward, and very briefly in closing this morning, to discuss the Youth Corrections Act. I know he's done an awful lot of work on his brief and other matters in connection with this in his research. On the Youth Corrections Act: What do you think as far as you know what the present state of compliance is with respect to the Bureau of Prisons in terms of separate treatment for youth offenders? And, too, whether you share any of Mr. Carlson's feelings about the efficacy of the act in terms of whether it ought to be amended or eliminated?

Those are two areas which you might care to comment on.

## TESTIMONY OF MICHAEL DAVIS, ATTORNEY, MADISON, WIS.

Mr. **Davis.** Thank you, Mr. Chairman, Mr. Railsback, staff counsel.

I apologize for the lack of a prepared statement. I was just notified fairly lately and I didn't get a chance to get one together.

Mr. **Kastenmeier.** We appreciate your coming. I understand it's not always possible to do that.

Mr. **Davis.** Thank you.

Mr. **Kastenmeier.** And we know you have done a lot of work in the field in the *Brown* versus *Carlson* case and you have developed an expertise which we'd like you to share.

Mr. **Davis.** Just a bit of expertise, I guess.

My experience has been limited to the *Brown* case and there was quite a bit of work involved in a short period of time. I did find out quite a bit of information. I don't have any statistics or figures with me here today, but perhaps I could just relate some of my personal experiences while I was involved in this case and they might shed some light on some of the things that were said here today.

The purpose of the hearing today, apparently, is to, according to your statement, Mr. Kastenmeier, the effectiveness of the Bureau of Prisons in carrying out the policies as set forth in the YCA.

My experience in the *Brown* versus *Carlson* case was that the Bureau of Prisons is, in effect, more or less ignoring the act in total. And by that I mean it seems to be a general policy that for whatever reasons, and some of these reasons were touched on here this morning, whether it be the expense involved, things like that. The Bureau has not implemented the act as Congress has seen fit.

I would recommend, without my going into too much detail on Judge Doyle's opinion in the case, that if it has not been read by everyone, to do that—you can find it in 431 F. Supp. 755, and it's a 1975 decision.

In the actual practice it seems that there is—and this is now limited to Oxford—there is no segregation of any types of facilities as contemplated by the act. The youthful offenders are sent to Oxford and are apparently given some kind of a brief orientation program, but nothing specifically directed to the fact that they are youthful offenders. They are housed in units with other adult offenders and not segregated.

I should say that all the statements I'm making are as of the time of the decision. I know there has been some changes as a result of the decision now as the warden of Oxford testified, that they did hold the remaining inmates there to see whether they would like to stay or not, but that was never done prior to the decision.

My experience with the case was that Mr. Carlson and his staff were in a sense trying to make an end run around the act, in that rather than address themselves to the fact of separate facilities for the youthful offender as required by the act, they tried to impress the court with the fact that there are no separate facilities. In fact, everyone is given the same opportunity at the prison and how can that be wrong. And in a sense that can't be argued with. I mean, I would be the last one to say that we should deny upgraded facilities for any offender, youthful or not. But the fact exists that the act is there—as you stated earlier, Mr. Kastenmeier—the act is in existence at this time and ought be complied with.

The—my understanding of the act is that offenders can be, after a presentence investigation and in the discretion of the judge, can be sentenced to a longer and, in fact, sometimes indeterminant period of sentencing. But the tradeoff for that, at least in the back of everyone's mind, is that the youthful offender will be sentenced under different conditions and have different opportunities while imprisoned. That's not what's happening now.

Mr. Carlson stated that there seems to be a growing dissatisfaction with the indeterminant sentencing aspect, and I would agree. I think so, too. However, I'd like to think that that is because, much like when the Youth Corrections Act was passed, we're taking another step forward out of the, you know, the dark ages of the penal systems and deciding that, in effect, that may not be fair.

I would suggest, also, that perhaps the word is out that prisoners sentenced under the Youth Corrections Act are not getting their money's worth, so to speak, in that sentenced to a longer indeterminant period of time they are not, in effect, receiving the special treatment that they ought be receiving.

At the time that the *Brown* case was decided, the particular institution in question here, Oxford, had a YCA population of 12 percent. That means 88 percent of the other inmates there were adult offenders.

Now, according to my understanding of the act, Congress had the intent of setting up certain segregated facilities for youthful offenders and then they did include some safeguarding language to the effect that, insofar as practical, those institutions ought be reserved for youthful offenders. Now, Judge Doyle's opinion, and obviously I agreed with that, said that in certain circumstances, temporarily or even semipermanently, if the need arose, say, tremendously expensive equipment or high-paid instructors or faculty were necessary, certain adult offenders could be brought in and housed with a youth; but it seems that what we have is just the exact opposite. We have an adult institution with youthful offenders brought in where it's convenient, not the other way around, as it should have been according to the intent of Congress.

As an example of how far away the Bureau of Prisons is from what I consider to be the intent of Congress, in an affidavit that was introduced on June 30, 1977, to Judge Doyle's court here asking for a stay of his opinion while an appeal was made to the seventh circuit in Chicago. Mr. Carlson in his affidavit said that to carry out Judge Doyle's order would cause irreparable harm to the Federal prison system and that hundreds and hundreds of youthful offenders would have to be shifted to different places around the country; that it would cost several hundred thousand dollars and that it would cause the need to create a brandnew facility, if not build a brandnew facility, at least change one completely over to a youthful offender institution. To me that just exemplifies from the actual intent of the law, by having to go through all the machinations to go through this in the first place.

I agree with Mr. Carlson in that there are other cases in other jurisdictions that run counter to the *Brown* case.

Mr. KASTENMEIER. I was going to ask you about that.

Mr. DAVIS. There is one in California, and I believe there was one in West Virginia at the time that this case was decided.

Mr. KASTENMEIER. Colorado case, too.

Mr. DAVIS. Yeah. And Mr. Carlson was saying that it would be a welcome relief to have some sort of, perhaps Supreme Court, ruling so that things could be cleared up.

My own opinion is that the *Brown* case was—I mean I had my bags packed for Washington, D.C., more or less. The *Brown* case was on appeal in the seventh circuit, and I feel that the Government saw the handwriting on the wall, perhaps, that there would be an affirm decision of Judge Doyle's decision, and that perhaps to contain the *Brown* decision in this geographical area, they themselves requested a dismissal of their own appeal.

So, the case has been contained here and there is not a circuit court ruling on the matter. But my personal opinion is that the act exists. Congress, you know, the people that put the act together, had the wisdom to try and carve out something special for youthful offenders. I'm sure you're all familiar with the law when they say to separate the youth—impressionable youth—from the hardened, sophisticated criminal. I don't see how that's changed today, and in fact I would think with many more liberal policies in effect, I think that should be more strongly emphasized.

To change the Youth Corrections Act now by removing any kind of a segregation aspect to it, I think would, in effect, defeat the whole purpose of the law. And the Bureau, by suggesting that would be, in effect, second-guessing the judge who made the original decision in the first place—that, yes, this youthful offender would benefit by specialized treatment in a specialized institution.

Mr. **Kastenmeier.** Thank you, Mr. Davis, for those comments, and you did so rather succinctly. You covered most of the points I would like to have asked you about.

You did say, I think, that you were uncertain how the several other decisions would have related to the *Brown* v. *Carlson* decision, West Virginia, California, and——

Mr. **Davis.** Well, I know there was a case in West Virginia that attacked the indeterminant sentencing portion of the YCA. And the decision in that case was—no, the indeterminant sentencing is OK because the benefit of separate facilities——

Mr. **Kastenmeier.** In other words, these cases were not on all fours in terms——

Mr. **Davis.** No, I don't think so.

Mr. **Kastenmeier** [continuing]. In terms of what was litigated.

Mr. **Davis.** Right, but I do agree that there has been no ruling by a higher court than the U.S. district court on this matter.

Mr. **Kastenmeier.** For the moment, assuming your case—namely, that the Bureau of Prisons is not following the law, they ought to follow the law—then if the Bureau of Prisons asked, "Well, how can we comply?" Precisely, what is your comment regarding a single facility if it is said, well, what you're going to do is group these people from Florida and New England in a single facility in Missouri, a small youth corrections unit called Junior Leavenworth, what have you—is this what you want? What would your answer be; that notwithstanding the fact that they are far from home in a single facility; that; nonetheless, the statutory purpose is carried out by having a fully segregated facility for youth offenders; would that be your answer?

Mr. **Davis.** I don't know how you would get around having everyone be far from their home. The only alternative would be, from what I see, from the intent of the Congress, is that there be more than just a single, you know, Junior Leavenworth central area. That will be scattered around the country much in the same fashion as there are adult institutions now—centers where youthful offenders are housed.

What that means in terms of expense, I'm not, you know, I'm not an expert.

Mr. **Kastenmeier.** We know that. More than probably can be accommodated from any immediate future budget.

Mr. **Davis.** Correct.

Mr. **Kastenmeier.** What about the law itself? You mentioned the indeterminant sentence trade-off. You recognize that indeterminant sentence generally as a notion is passe in corrections. Would you amend the Youth Corrections Act to at least eliminate the indeterminant sentence, or do you think that's an important part of the package.

Mr. **Davis.** I would eliminate the indeterminant sentencing part.

**Mr. Kastenmeier.** You would?

**Mr. Davis.** Yes, I would.

**Mr. Kastenmeier.** Mr. Railsback?

**Mr. Railsback.** I think you really covered everything, except I would like to ask if the conditions that you saw in the *Brown* case; were the conditions very bad at that particular facility—what's the name?

**Mr. Kastenmeier.** Oxford.

**Mr. Railsback.** Yeah, Oxford, as far as the juvenile's concerned?

**Mr. Davis.** Hard to respond——

**Mr. Railsback.** Yeah, in other words, what prompted the suit?

**Mr. Davis.** I believe the suit was prompted by the fact that the act was in existence and was not being complied with in that some of these fellows—I can't comment on their moral character, all of them—but some of these fellows felt that they were being incarcerated in a situation which would not be beneficial to their rehabilitation, that it was more retributive oriented, that they were being punished as opposed to rehabilitated. And in effect, that's the whole purpose of the law—of the act itself, is, let's get away from punishment, let's get more toward rehabilitating these people. And they felt that at Oxford—I should speak of *Brown;* he felt that while he was at Oxford that was not the effect of what was happening to him up there. He was not being given any kind of special consideration being a youthful offender. He was given the same treatment as adult offenders.

Now, we can all decide for ourselves whether or not that's a good or bad thing. All I'm saying is that the act does exist and Congress said let's have different treatment for these folks, and it's not happening.

**Mr. Kastenmeier.** Let me ask you this, because, you know, I concur that a literal reading of the law would appear to require certain things that have not been really provided as a matter of policy by the Bureau. However, realizing that we're looking for ways to accommodate the law, insofar as practicable whatever that requires. What is your comment with reference to the Bureau's setting up of separate Youth Correction Act units within a larger institution? Do you think that's a reasonable compromise in terms of achieving the objectives of the law?

There may be another factor involved which may affect your answer. That is, of course, Mr. Carlson has said that the treatment model used in indeterminant sentences is regarded as something not really achievable to the extent that we used the word "rehabilitation."

**Mr. Davis.** Yes.

**Mr. Kastenmeier.** And that what we would provide is opportunities—a setting for self chosen rehabilitation, but not impose a treatment model on these Youth Correction offenders. Providing that, and Youthful Correction Act units within a larger facility, do you think that that is a reasonable compromise in terms of accommodating to the act?

**Mr. Davis.** That perhaps might be an effective first step to create something like that. I mean, anything would be better than the situation as exists now, in my opinion.

You might run into just as many, say, financial difficulties that way as you would in creating separate institutions or at least institutions where the majority of the people would be YCA offenders in that—you know, I'm not a prison administrator—but I could see a lot of problems with having one lecturer and one instructor in auto mechanics or something having to teach different classes at different times just because there is supposed to be a wall between these folks. You know what I mean, that could cause some problems in itself. At least you might house them separately, something along that line.

But, yes, I would see this as a good first step.

Mr. **Kastenmeier.** Thank you, Mr. Davis, your testimony was very helpful. I appreciate your appearance this morning.

Mr. **Davis.** Thank you.

Mr. **Kastenmeier.** This really concludes the first hearing on the situation involving juveniles and youthful offenders in the Federal system. We would hope to follow this up at some point in the future. As I have indicated, there are others, the National Prison Project and others who have participated. I want to thank the Director of Federal Bureau of Prisons, Mr. Norman Carlson, and his staff who have accompanied him here today. I want to thank Mr. Phelps of the Youth Policy and Law Center of this city and the two persons representing the Menominee Legal Defense Offense Committee, Phyllis Girouard and Louis Hawpetoss, for their contributions this morning, as well as Michael Davis, the last witness.

I'd also like to thank others who appeared here this morning, whether or not they made a verbal contribution to the proceeding, including Mr. Wolfe, who is a minority counsel for the subcommittee, and Mr. Bruce Lehman, on my right, who is majority counsel on the subcommittee and who, incidently, is a Madison-raised and Madison-educated attorney. Particularly, I want to thank Mr. Tom Railsback, Congressman from Illinois, for being here this morning; and I trust that the followup on these hearings and further deliberations and conferences with Mr. Carlson and others can produce some reconciliation of these problems. In time, of course, as is indicated, changes in the law reflecting what is intended as a matter of public policy by the Congress may also be indicated.

So, with that I conclude our business this morning by adjourning this hearing. Thank you.

[Whereupon, at 11:45 p.m., the hearing was concluded.]

# APPENDIXES

## Appendix 1

### Statement of Roberta J. Messalle, a Cofounder of Institution Educational Services, Inc., and Associate Editor of Its Monthly Publication, The Prison Law Monitor

Institution Educational Services, Inc. (IES) is a non-profit organization striving to bring all legal and legislative developments in the field of prisoners' and institutionalized juveniles' rights to the organizations and individuals concerned. The goals of IES are to distribute information and materials, to educate the public, the legal profession, legislators, institutional administrators and incarcerated adults and juveniles of the rights of prisoners and how to enforce them through legal channels. IES believes improvements in those channels will occur as a result of such national coordination. IES has the unique ability to and responsibility of providing the public and experts with information about prisoners and the experience of incarceration in a way that is truly reflective of their legal and political situation as prisoners experience it. IES is pleased to offer comments on the Implementation of the Youth Corrections Act to the Subcommittee.

In 1950 Congress characterized the Youth Corrections Act (YCA) as "[a] system of analysis, treatment, and release that will cure rather than accentuate the anti-social tendencies that have lead to the commission of crime".[1] With these words, Congress charged the Federal Bureau of Prisons with responsibility for the care and custody of all youthful offenders sentenced under YCA. The YCA meant to divert youthful offenders from a continued life of crime which harmed themselves and society. It was meant to protect impressionable youthful offenders who had inappropriately been designated to adult prisons. Inappropriate placement had proven to subject them to the pressures, influences and exploitation of more hardened and sophisticated adult offenders. It was meant to prevent the physical and psychological debilitation that results from idleness and boredom, typical aspects of incarceration in this country.[2] YCA was meant to identify the vocational, educational and other fundamental needs that were missing before the youthful offender was sentenced. The identification, or classification, process required by the YCA, would have discovered the social weaknesses and strengths of the offender and would have provided insight and direction, essential to the development of clear programs structured around those social needs. With the help of the youthful offender's participation, the Bureau of Prisons would have identified, for the offender, what skills were available and should be developed to enable that offender to live a law abiding life upon return to our society.

To carry out its goals of diversion, protection, prevention, and identification, YCA contains specific guidelines for the classification, care and custody of youthful offenders following sentencing under its mandate. These guidelines describe a correctional approach based upon humane and compassionate consideration for our youth that has, and will, stand the tests of time and changing popular concepts.

These goals, made into law, have little to do with the controversy of rehabilitation versus punishment and deterrence and much to do with the internal administration of a correctional system. Despite this, Federal Bureau of Prisons' Director Norman Carlson has interpreted the YCA as a sentencing disposition and as an outdated component of the "medical model".[8] Mr. Carlson was correct in saying the medical model is a concept being abandoned by criminal justice experts. He was also correct when he later criticized and questioned the wisdom and usefulness of the YCA as a sentencing disposition. However, YCA was not meant to be used solely as a sentencing tool, and cannot, therefore, be viewed only on its merits as such. It is also not possible to dismiss the well-intended mandates of YCA, as part of the more or less abandoned medical model, without first reviewing the Bureau of Prisons' 28-year history of implementing the law of the Youth Corrections Act.

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[1] 1950 U.S. Code Serv. 3983, 3987-88.

[2] *See, e.g., Jefferson* v. *Southworth*, 447 F.Supp. 179 (D.R.I. 1978); *Battle* v. *Anderson*, 447 F.Supp. 516 (E. D. Okla. 1977); and *Trigg* v. *Blanton*, No. A-6067 (Chancery Crt., Davidson Co., Tenn., 8/23/78), 1 Prison L Mntr. 77, Sept., 1978.

Specific sections of YCA have assigned the Bureau with Responsibility for youth offenders in several categories: Segregated Facilities and Treatment; Availability of Facilities; Classification Studies; and Powers of Director Concerning Placement and Release of Youth Offenders. Following is an examination of those sections and our comments on the Bureau's implementation of them.

### SEGREGATED FACILITIES AND TREATMENT

This section offers guidelines for the kinds of facilities used for YCA prisoners, those facilities should be used solely for the purpose of housing YCA prisoners and those prisoners will be segregated from other prisoners.

"Committed youth offenders * * * shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall * * * designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for the treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment. 18 U.S.C. § 5011

On June 1, 1978, the Bureau of Prisons released Policy Statement 5215.1 "Establishment of Functional Units for YCA Sentenced Inmates". This policy represents the first time since 1950 BOP officially designated YCA housing units in its facilities. Full implementation and compliance was expected not later than October 1, 1978. The policy cites 21 institutions where YCA units have been implemented. It does not, however, provide for the total segregation of YCA prisoners, or their segregation according to their treatment needs. It does not provide guidelines for any special classification center or agency. YCA prisoners are classified and segregated only on their status as YCA prisoners, not their need for special care and custody. Although the above section of YCA encourages the specific use of training schools, farms, forestry camps and other community based correctional facilities, and gives the Bureau of Prisons the authority to transfer YCA prisoners to such facilities, the policy statement includes one sentence on this extremely important guideline. "All halfway houses are authorized to house YCA inmates" (See P.S. 5215.1, 7.C.). The 21 facilities containing YCA units also house other adult offenders and are not considered training schools, farms or alternatives to traditional imprisonment, as encouraged by this section of YCA.

In Febuary, 1978, four months before BOP released P.S. 5215.1 which concentrates on the "insofar as practical" interpretation of YCA, the Third Circuit Court of Appeals rejected that same BOP argument in *U.S. ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3rd Cir. 1978):

"* * * The government * * * argues that YCA inmates need only be segregated from other offenders "insofar as practical," and that the Attorney General is authorized by 18 U.S.C. § 4082 to designate the place of confinement of all federal prisoners. * * * [Y]ouths committed under the YCA must be segregated from other offenders even if it is impractical to place them in institutions used solely for the treatment of youth offenders. Segregation of youth offenders from adult prisoners is, we believe, mandated by the YCA."

"* * * [W]e must examine the statutory scheme as a whole, its purpose and its history. This review has convinced us that our interpretation of § 5011 is correct and that Congress intended the segregation of youth offenders from adult criminals as an integral part of the statutory scheme." 572 F.2d at 109.

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[8] *Oversight Hearings on Federal Bureau of Prisons Policies Regarding Placement of Juveniles and Implementation of the Youth Corrections Act*, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, U.S. House of Representatives, Madison, Wisconsin, October 27, 1978, p. 20–21.

In March, 1978, three months before the release of P.S. 5215.1 a BOP Location List of YCA Offenders (attached as Exhibit A), showed just 80 prisoners in prison camps, 76 in Community Treatment Centers, and 52 held in adult penitentiaries, including those noted for their violence and corruption. The list showed a total of 13 YCA prisoners at the U.S. Penitentiary, Lewisburg, Pennsylvania, a facility under continuous investigation for over 2 years concerning prisoner-to-prisoner violence, staff negligence, guard brutality and racism and discriminatory practices in placing prisoners in treatment programs and housing.[4] Lewisburg is also the source of *U.S. ex rel Dancy* v. *Arnold, supra* and despite the strong language in that case, still houses YCA prisoners. "* * * [Y]outh offenders cannot, consistent with the Act's rehabilitative purposes, be placed among adult prisoners in a penitentiary. That the Act was designed to spare youth offenders the corruptive influence of prison life and association with adult criminals is made clear by its legislative history." *U.S. ex rel. Dancy* v. *Arnold, supra* at 112. Bureau of Prisons' P.S. 5215.1 falls short of compliance with the law of the Youth Corrections Act in its operation guidelines for implementing § 5011.

### AVAILABILITY OF FACILITIES

This section of YCA warns the courts not to use YCA as a sentencing disposition if the desired treatment and facilities are not available.

"No youth offender shall be committed to the Attorney General under this chapter until the Director shall certify that proper and adequate treatment facilities and personnel have been provided." 18 U.S.C. § 5012.

The courts are becoming increasingly aware of the serious problems within our prisons.[5] In some cases, courts have actually ordered YCA prisoners released because BOP could not comply with the mandates of YCA. *Brown* v. *Carlson*, 431 F. Supp. 755 (W.D.Wis. 1977). As Michael Davis, the attorney in *Brown* v. *Carlson, supra*, correctly surmised before you on October 27, it appears knowledgeable judges are sentencing youthful offenders under adult sentences. The Supreme Court in *Dorszynski* v. *U.S.* 418 U.S. 424, 432 (1974) found that if the youthful offender will not derive benefit from the special treatment, the court may then sentence him/her as an adult. The Bureau of Prisons has not implemented the guidelines of YCA for 28 years. The increasing number of cases attacking BOP's failure to comply with YCA law has warned the courts that YCA prisoners are sentenced to indeterminate sentences, sent to adult penitentiaries where they are not segregated for their own protection, and where they receive the same minimal training and counseling as other prisoners. When confronted with the choice of an adult, shorter sentence or the traditional application of the YCA law, the shorter, more definite adult sentence is the lesser of evil. It is fair, therefore, to assume the Bureau's reduction in YCA prisoners is because courts have elected to expose youthful offenders to as little of prison life as possible by giving them an adult sentence, knowing they will get the same treatment regardless of sentencing recommendations and status.

### CLASSIFICATION STUDIES AND REPORTS

This section offers guidelines for the use of a classification center or agency and outlines a detailed and exhaustive classification process.

"* * * The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency." 18 U.S.C. § 5014.

The Bureau of Prisons does not have a classification center. Nor does it rely on a classification agency. Instead, the Bureau of Prisons implements what is called "Admission and Orientation" (A&O), a two week period during which a prisoner is housed separately while waiting job and cell assignment and taking a battery of standardized psychological tests. The merits of these tests have been questioned by psychologists themselves for many years. In addition to being inaccurate in determining the emotional state and needs of an individual, these tests are written and designed to evaluate the capabilities and emotional stability of persons from the white middle class sector of our society. Prisoners, usually poor and of racial minorities, with minimal education and histories of negative experiences within our educational institutions, are often unable to comprehend the questions. Also used in the existing BOP classification system is the use of the pre-sentence reports and FBI rap sheets. These records will point out a history of delinquency or criminal activity, but will touch only the mere surface of an individual prisoner's problems, needs and interests. One out of the two week A&O, prisoners' caseworkers are assigned the responsibility of seeing they participate in the appropriate programs. Caseworkers often carry a caseload of 160 prisoners, in addition to the masses of paper work required as part of the job. This allows little time for in depth communication or the establishment of an understanding relationship.

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[4] Board of Inquiry Report, Federal Bureau of Prisons, July, 1976, staff negligence, prisoner-to-prisoner violence; NAACP, December, 1976–January, 1977, staff racism & discrimination; U.S. Commission on Civil Rights, March, 1977, racial discrimination of prisoners in program, job and housing assignments; Office of Professional Responsibility, Federal Bureau of Prisons, guard brutality, July 1978; U.S. Department of Justice, pending, guard brutality; and U.S. Commission on Civil Rights, July, 1978, staff racism and racial discrimination of prisoners.

[5] "As for being soft, nothing less is true. These [30] judges know the hard truth: Prisons don't work, they produce crime, they destroy the spirits of both the keepers and the kept, they are extravagantly costly and their operation is often unconstitutional." from "Punishment Without Prisons", covering the Conference on Creative Alternatives to Prison, The Washington Post, November 17, 1978.

The Unit Management System, BOP's much publicized concept of combining housing and classification, does little to identify prisoners' skills, vocational interests, educational needs or aspirations, or their need for alcohol or drug treatment. The Unit Management System is little more than a housing arrangement which attempts to segregate prisoners by the degree of their aggressive behavior. Attached is a copy of the classification tool used at U.S.P. Lewisburg where the first Unit Management System was implemented in a penitentiary setting and on which more recent housing arrangements are based. (See Exhibit B) This questionnaire asks nothing that would reveal a prisoner's vocational or educational interests. It does attempt to predict dangerousness. There is much documentation that even highly sophisticated tests have not been able to predict dangerousness in an individual.

Another disadvantage to the Unit Management System as a method of implementing the law of YCA, as outlined in P.S. 5215.1, is the absence of professional counseling. Under the guidelines of P.S. 5215.1, 5.C, two Correctional Counselors, or guards, are responsible for the day to day supervision of the unit residents, as well as the most frequent counseling sessions within the unit. The same correctional counselors/guards are also responsible for disciplinary sanctions, often resulting in sentences to disciplinary segregation. It has been unanimously accepted that the first and most essential ingredient in any therapeutic relationship is trust. Prisoners simply do not trust the same guards who control their daily lives with their inner most wishes and fears. The new BOP policy is still seriously short of compliance with the law and legislative intent of the Youth Corrections Act under § 5011 and § 5014.

## POWERS OF DIRECTORS AS TO PLACEMENT OF YOUTH OFFENDERS

This section of YCA gives the Bureau of Prisons authority to recommend for release YCA prisoners. In other words, Mr. Carlson does have some power over the major negative aspect of the YCA law, the indeterminate sentence.

"(a) On receipt of the report and recommendations from the classification agency the Director may—(1) recommend to the Commission that the committed youth offender be released conditionally under supervision * * *" 18 U.S.C. § 5015.

It is true the scope of these Congressional hearings is to examine the Bureau's Implementation of YCA and that the Bureau, under this law, can only recommend to the U.S. Parole Board that a prisoner be released. If the Bureau is fulfilling this mandate by recommending early conditional release, and attempting to reduce its overcrowded population, then Congress must determine if the U.S. Board of Parole is applying the guidelines and law of YCA when evaluating youthful offenders for parole release.

After reviewing the Bureau's efforts to comply with YCA, one must ask an important question. What happens to a YCA prisoner caught in such a situation?

Frequently, the YCA prisoner is a young man suffering from drug or alcohol dependency. Depending on the nature of his offense and bed space available, not his YCA status, age or the circumstances of his offense, he was placed in a BOP facility. Despite Mr. Carlson's testimony about the interest in maintaining prisoners close to their homes, the great number of prisoners asking for information on how to obtain a transfer closer to their families exposes the truth in this situation. The BOP designates institutional placement on its security and bed space limitations, not on the geographical location of the prisoners' family and community ties.

Often, the YCA prisoner, feeling vulnerable and alone, is subject to and easily victimized by homosexual pressure and assaults. In these hearings, Congressman Railsback cited information that in 1976, over half the BOP population had been homosexually assaulted.[6] In defending himself against such abuse, the YCA prisoner often receives disciplinary reports. Worst of all, but most frequent, he will receive an additional adult sentence for the serious offenses of assault, possession of a weapon, or the murder of his attacker. Recent studies have determined that victims of homosexual assault are often the persons who later become homosexual rapists.[7] If the YCA prisoner receives an adult sentence, his chances for early release are destroyed. His chances for ever taking advantage of even the minimal benefits afforded YCA prisoners are seriously jeopardized if not lost.

The other option available to the YCA prisoner is to choose administrative detention, or protective custody. It is well known and a sharply criticized fact that life in protective custody is the same or worse than life in disciplinary segregation. Prisoners are confined to their cells 23½ hours per day. They have limited access to law library facilities. They have no access to the programs available to general population. They cannot participate in religious programs. They are not able to work in the industries programs and earn money to obtain even the minimal job skills available. They cannot participate in educational classes They have limited opportunity for exercise, especially outdoor exercise. And, the most serious aspect of the choice of protective custody for a YCA prisoner is that he will continually be turned down by the Parole Board for early release because of his "refusal to program", or live in general population. Therefore, YCA prisoners are given a choice. As a guard at the adult penitentiary at Marion, Illinois advised one YCA prisoner seeking some protection other than solitary confinement, "go out there and fight like a man" and possibly get an added adult sentence for assault or murder with no relief from the threats to his safety. Or, he can choose the devastating debilitation of solitary confinement, which often leaves permanent physical and psychological damage, for his own protection and safety.

I will use one YCA prisoner whose case dramatically points out the results of non-compliance with the protective statutes of YCA.

A young man returned from the Vietnam War to his family, fiancee and home in Arizona. Like many young men in that war, he suffered emotional problems and became drug dependent. He did not have a prior criminal or police record. Shortly after his return, he was convicted of his first offense, assualt, while using hallucinogens. He has little recall of the actual offense. Out of consideration for the young man's clear record, problems and the circumstances of the offense, the judge sentenced him under 18 U.S.C. § 5010, the Youth Corrections Act, and recommended drug therapy. Upon entering the federal prison system, the young man was sent immediately to the adult penitentiary for older, more hardened offenders at McNeil Island, Washington, in clear violation of § 5011 There were closer facilities suitable to the young man's problems and needs. He could have been sent to Englewood, Colorado; Texarkana, Texas; El Reno, Oklahoma; Terminal Island, California; or the drug treatment center at Forth Worth, Texas.[8] After being at McNeil Island for a short time, the young man was the subject of homosexual pressure and requested transfer to another institution. He was again transferred, in violation of § 5011, to an adult penitentiary at Leavenworth, Kansas. Again, he was the subject of homosexual pressure and received a disciplinary report for fighting while defending himself against his attackers. After being held in disciplinary segregation and then protective custody for some months, he requested transfer to another institution. Again, in stark violation of § 5011, the Bureau transferred him to the country's notorious super-maximum security prison for the most hardened offenders, the adult penitentiary at Marion, Illinois. He immediately requested transfer. Before a transfer could be arranged, he was raped, after having been drugged by his rapist.[9] A few days later, out of fear and belief his situation would not improve, he made an escape attempt. He was apprehended when he was shot from the Marion fence and suffered bullet wounds to his head. He has since received an adult sentence for his escape attempt, was transferred to the adult reformatory at Terre Haute, Indiana where he remained in protective custody. He is now in protective custody at the adult penitentiary at Lewisburg, Pennsylvania, 3,000 miles from his family in Arizona. In the 4 years since his first offense and incarceration, under the Bureau's custody the YCA prisoner has spent nearly 3 years in solitary confinement for his own protection. He has seen his remarkably supportive family just once, during his escape trial. He has never received the counseling or drug therapy he needed.

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[6] See fn. 3 at p. 6.

[7] Wooden, Kenneth, "No Name Maddox: Case History of Charles Manson", *Weeping in the Playtime of Others*, McGraw-Hill, N.Y., 1976, p. 50.

[8] These institutions had been designated as appropriate placement for YCA prisoners even prior to the establishment of P.S. 5215.1. Of the 21 facilities containing YCA units under P.S. 5215.1, each of these institutions has been directed to develop such a unit, thus maintaining their status of "appropriate to YCA placement."

[9] *U.S.* v. ***Micklus***, Cr. No. 76-59-E, (E.D. Ill. 1976), from trial testimony of defense witness-assailant.

This prisoner fought for his rights under the law of the YCA. In March of this year, the District Court in the Middle District of Pennsylvania ordered the Bureau of Prisons to transfer him to an appropriate YCA facility.[10] The Bureau instead recommended him for parole. The young man was recently paroled to his adult sentence for the escape attempt. He is presently serving that sentence in protective custody at the adult penitentiary at Lewisburg. He is now totally exempt from even the minimal benefits offered in BOP P.S. 5215.1.

## WHAT IMPROVEMENTS CAN CONGRESS MAKE?

Perhaps the most crucial area in need of improvement, and the only place to begin, is the BOP classification procedure. It is obvious that an exhaustive classification procedure, as required by YCA, does not exist and would have prevented the shocking example I've just described. Detailed classification procedures would identify YCA prisoners, and if implemented system-wide, would be advantageous to all BOP prisoners. This would work to maintain Mr. Carlson's interest in treating all prisoners equally and fairly. In many recent state correctional systems currently under litigation, classification systems have been found unconstitutionally lacking and key contributors to overcrowding, violence, and the development of superficial programs. *Battle* v. *Anderson, supra; Trigg* v. *Blanton, supra; O'Bryan* v. *County of Saginaw*, 446 F.Supp. 436 (E.D. Mich. 1978). In a system as large as the federal prison system which covers the nation with 38 institutions, relies on contractual facilities, houses 28–30,000 prisoners ranging from juveniles to geriatrics, a detailed and highly specialized and individualized classification system is essential. Congress can ask and provide the Bureau of Prisons with the assistance to develop a more exhaustive and comprehensive classification system.

The development of such a classification system would identify individuals with specialized needs and give BOP the insight to appropriately assign and designate them, and pinpoint the programs prisoners most want and need. Mr. Carlson has stated that prisoners are unmotivated toward change.[11] Yet, prisoners tell us it is not their lack of motivation that causes their lack of interest in and support of prison programs. Prisoners know why they are in prison. So does Mr. Carlson. Before the House Committee on the Judiciary, he acknowledged the root causes of crime in our society are poverty, unemployment and racial discrimination.[12] Few, if any, of the BOP's rehabilitation programs are geared toward addressing, fighting, these causes of criminal behavior in our society. Prisoners say they have no faith or belief in and hope for learning employable skills and standards through the inadequate and shallow programs available to them. While the Bureau of Prisons has, in theory, abandoned the medical model, BOP has not simultaneously developed programs attacking the real causes of crime. Today, "treatment" within the Bureau of Prisons still follows the scope of the medical model. Congress can ask for the development of a classification procedure targeting the causes of crime and the development of programs structured to reduce poverty, unemployment and radical discrimination.

We agree the indeterminate sentencing aspects of the YCA should be deleted from the law. However, BOP has had, for 28 years, the power to exercise its authority over the indeterminate sentence of YCA prisoners by recommending them for elderly conditional release. The costs of incarceration are skyrocketing. One statistic estimates the cost to imprison one person for 12 years is $480,000.[13] Can Congress afford to permit BOP to continue non-compliance with its power to evaluate and recommend for release a significant portion of its population and reduce its strained and overcrowded facilities at such a high cost to society?

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[10] *Micklaus* v. *Carlson*, C.A. No. 77–1070 (M.D. Pa. 1978).

[11] *Department of Justice Authorization*, Hearings before the Committee on the Judiciary, U.S. House of Representatives, March, 1978, p. 120.

[12] Id. at p. 118.

[13] "The Tough Guys are Soft on Crime", Ben H. Bagdikian, Conference on Crime and Punishment, University of Southern California, Los Angeles, CA, November 2, 1978.

In March, 1978 Mr. Carlson stated approximately 25 percent of his population had been committed under the Youth Corrections Act.[14] At that time, BOP prisoner population was roughly 30,000, making the approximate number of YCA commitments 7,500. The following month in hearings before the U.S. Senate Committee on the Judiciary, Mr. Carlson testified his population was overcrowded by over 7,000 prisoners.[15] The Federal Bureau of Prisons has the authority under 18 U.S.C. § 5011 to recommend the transfer of YCA prisoners to contractual community facilities. Under § 5015, BOP has the authority to recommend conditional early release of YCA prisoners. Congress must examine the Bureau's exercise of its authority under these statutes. Equally important, and within this Subcommittee's jurisdiction, would be an examination of the application of § 5017 by the U.S. Board of Parole.

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender. * * *

(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender * * * shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction." 18 U.S.C. § 5017.

In *U.S. v. Fletcher*, 425 F.Supp. 918 (D.C.D.C. 1976), the court ordered the defendant released after a finding of inappropriate use of the parole guidelines under the YCA. See also, *Page* v. *U.S.*, 425 F.Supp. 1007 (S.D. Fla. 1977); and *Cook* v. *Ingram*, 436 F.Supp. 367 (S.D.Fla. 1977). The growing number of cases finding inappropriate application of YCA guidelines by the U.S. Board of Parole indicate the need to examine that agency's compliance with the law of YCA. Such an examination would also help the Bureau of Prisons to more fully exercise its authority under § 5015.

Although Mr. Carlson testified before you in March, 1978 that he was responsible for 25 percent, or 7,500 YCA commitments, before you in October, 1978, he testified he had just 10 percent, or 2,800 YCA prisoners.[16] Perhaps the difference of 5,200 prisoners can be found in the reduction of BOP's population. Perhaps the key word is "commitments", and one can only question how many YCA prisoners end their YCA sentence as adult offenders serving additional sentences. Congress must learn more about these young people who have suffered the corruptive influences of prison while well established laws exist to protect them from those very influences. For these young people, especially the ones wasting away in solitary confinement for their own protection, Congress must ask the Bureau to provide some relief, as required by the law of YCA.

The Congress of 1950 was not promoting a fad when it passed the Youth Corrections Act. If anything, that Congress had compassion and foresight for the problems and needs of our youth. Since 1950, our prisons have grown alarmingly and unconstitutionally overcrowded. Continuing studies from every branch of the criminal justice network confirm that imprisonment, especially in our present overcrowded prisons, is a physically and psychologically debilitating experience. The modern experience of imprisonment in this country is one that almost guarantees the prisoner will be released to society more bitter and with antisocial tendencies even more deeply entrenched. The outdated vocational programs, superficial counseling sessions all constitute hollow euphemisms of such well meaning concepts as "corrections", rehabilitation", and "treatment". Congress selected goals of diversion, prevention, protection and identification for our youth, and ourselves. Congress went on to turn those goals into law to ensure they would be met by future generations. We cannot expect to convince our troubled young people of the advantages of a law abiding life, the fairness of our system of justice, unless we ask our public institutions to also comply with the protective laws of this land.

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[14] See fn. 10 at 119.

[15] *Department of Justice Budget Authorization*, Hearings before the Committee on the Judiciary, U.S. Senate, April, 1978, p. 133.

[16] See fn. 3 at 128.

## EXHIBIT A

## LOCATION OF YCA OFFENDERS IN POPULATION

[Information taken from IIS files current as of Dec. 31, 1977]

| | Number |
|---|---|
| FCI's: | |
| Alderson | 54 |
| Ashland | 108 |
| Butner | 27 |
| Danbury | 8 |
| El Reno | 178 |
| Englewood | 243 |
| Fort Worth (M) | 10 |
| Fort Worth (F) | 20 |
| La Tuna | 13 |
| Lompoc | 287 |
| Lexington (M) | 23 |
| Lexington (F) | 115 |
| Memphis | 62 |
| Miami | 88 |
| Milan | 197 |
| Morgantown | 197 |
| Oxford | 45 |
| Petersburg | 269 |
| Pleasanton | 46 |
| Sandstone | 7 |
| Seagoville | 43 |
| Tallahassee | 222 |
| Terminal Island | 10 |
| FCI total | 2,272 |
| FDC's: Florence (FDC total) | 4 |
| Medical center: Springfield (USMCFP total) | 32 |
| Penitentiaries: | |
| Atlanta | 2 |
| Leavenworth | 7 |
| Lewisburg | 13 |
| Marion | 1 |
| McNeil Island | 8 |
| Terre Haute | 21 |
| Penitentiary total | 52 |

| | Number |
|---|---|
| Camps: | |
| Allenwood | 4 |
| Eglin | 6 |
| Leavenworth Camp | 1 |
| Lompoc Camp | 46 |
| Marion Camp | 1 |
| Maxwell | 2 |
| McNeil Camp | 4 |
| Stafford | 14 |
| Springfield Camp | 1 |
| Terre Haute Camp | 1 |
| Camp total | 80 |
| MCC's: | |
| Chicago | 3 |
| New York (M) | 7 |
| New York (F) | 1 |
| San Diego (M) | 4 |
| San Diego (F) | 2 |
| MCC total | 17 |
| CTC's: | |
| Atlanta | 5 |
| Chicago | 10 |
| Detroit | 5 |
| Houston | 2 |
| Kansas City | 7 |
| Los Angeles | 7 |
| New York | 19 |
| Oakland | 7 |
| Dallas | 2 |
| Phoenix | 9 |
| Long Beach | 3 |
| CTC total | 75 |

# EXHIBIT B

"A"

## CHECKLIST FOR THE ANALYSIS OF LIFE HISTORY RECORD OF ADULT OFFENDERS

Form II
1972

Col. No.

(1-8) Name and number of inmate: ____________________
(9) Race: ____________________
(10-11) Age to nearest birthday: ____________________
(12-13) Name of person completing this checklist: ____________________

Place a check mark before each behavior trait which describes the life history of the inmate.

### CHECKLIST FOR THE ANALYSIS OF LIFE HISTORY RECORDS

Col. No.

(14) ____ 1. Has few, if any friends
(15) ____ 2. Openly verbalizes values and opinions in line with crime as a career
(16) ____ 3. Thrill-seeking
(17) ____ 4. Preoccupied; "dreamy"
(18) ____ 5. Rapid mood changes
(19) ____ 6. Psychiatric diagnosis of some form of neurosis
(20) ____ 7. Uncontrollable as a child
(21) ____ 8. Has expressed guilt over offense
(22) ____ 9. Expresses need for self-improvement
(23) ____ 10. Discharge from military service other than honorable
(24) ____ 11. Common-law relationships with women
(25) ____ 12. Socially withdrawn
(26) ____ 13. Weak, indecisive, easily led
(27) ____ 14. Previous local, state or federal incarceration
(28) ____ 15. Multiple marriages
(29) ____ 16. Tough, defiant
(30) ____ 17. Irregular work history (if not a student)
(31) ____ 18. Offenses always or almost always involve others
(32) ____ 19. Noted not to be responsive to counseling
(33) ____ 20. Gives impression of ineptness, incompetence in managing everyday problems in living.
(34) ____ 21. Supported wife and children
(35) ____ 22. Claims offense motivated by family problems
(36) ____ 23. Unmarried
(37) ____ 24. Impulsive
(38) ____ 25. Close ties with criminal elements
(39) ____ 26. Selling or smuggling narcotics
(40) ____ 27. Depressed, morose
(41) ____ 28. Anxious, fearful
(42) ____ 29. Physically aggressive (strong arm, assault, reckless homicide, attempted murder, mugging, etc.)
(43) ____ 30. Involved with organized racketeering
(44) ____ 31. Apprehension likely due to "stupid" behavior on the part of the offender
(45) ____ 32. Excessive gambling
(46) ____ 33. Single marriage
(47) ____ 34. Expresses feelings of inadequacy, worthlessness
(48) ____ 35. Psychiatric diagnosis of psychopathy or sociopathy
(49) ____ 36. Difficulties in the public schools
(50) ____ 37. Escape from custody
(51) ____ 38. Suffered financial reverses prior to commission of offense for which incarcerated
(52) ____ 39. History of excessive use of alcohol
(53) ____ 40. Passive, submissive
(54) ____ 41. Bravado, braggary
(55) ____ 42. Guiltless; blames others
(56) ____ 43. Stable family life in childhood and youth
(57) ____ 44. No significant relationships with women
(58) ____ 45. Lived a nomadic ("hippie") existence prior to offense
(59) ____ 46. Sees self as in the rackets as a career
(60) ____ 47. Expresses lack of concern for others
(61) ____ 48. Frequent moves from state to state
(62) ____ 49. Raised in urban slum area
(63) ____ 50. History of drug abuse or addiction

RETURN TO A & O COORDINATOR

United States District Court, W. D. Wisconsin—May 6, 1977

HAYWARD BROWN, PETITIONER
*v.*
NORMAN CARLSON AND GEORGE RALSTON, RESPONDENTS
HAROLD LOUIS WALLS, PETITIONER,
*v.*
GEORGE RALSTON AND NORMAN CARLSON, RESPONDENTS
NORMAN WEAVER, PETITIONER
*v.*
GEORGE RALSTON AND NORMAN CARLSON, RESPONDENTS.

Nos. 75-C-493, 75-C-607 and 75-C-544.

Michael R. Davis, Madison, Wis., for petitioner Brown.

David C. Mebane, U.S. Atty., W. D. Wisconsin, Madison, Wis., Patrick J. Glynn, S. Cass Weiland, U.S. Dept. of Justice, Washington, D.C., for respondents Carlson and Ralston.

Harold Louis Walls, pro se.

Norman Weaver, pro se.

## ORDER

JAMES E. DOYLE, District Judge.

These are petitions for writs of habeas corpus properly before this court by virtue of 28 U.S.C. § 2241 (1970). Petitioners are currently inmates at the Federal Correctional Institution, Oxford, Wisconsin. They were sentenced pursuant to 18 U.S.C. § 5010(c), which is a part of the Federal Youth Corrections Act (YCA), 18 U.S.C. §§ 5005–5026. Each petitioner alleges that Oxford is not the type of institution specified in the YCA for his confinement. In addition, petitioner Brown alleges that he has not been sent to a classification center or agency before being sent to a designated institution despite the requirements of 18 U.S.C. § 5014. Because the issue presented in each of these petitions regarding the propriety of each petitioner's confinement at Oxford is identical, I have consolidated the petitions for the purposes of this opinion. I now "dispose of the matter as law and justice require." 28 U.S.C. § 2243.

## FACTS

On the basis of the entire record in each case, I find as fact those matters set forth in this section of this opinion.

On January 19, 1954, the Deputy General of the United States issued a memorandum (memo no. 64) to the clerks of the United States District Courts, the United States Attorneys, the United States Marshals, and the United States Probation Officers, informing them that the Director of the Bureau had certified, pursuant to 18 U.S.C. § 5012, that proper and adequate treatment facilities and personnel were available for the implementation of the YCA for the judicial districts of the First, Second, Third, Fourth, Fifth (except for districts in Texas and Louisiana), Sixth and Seventh Circuits. The memorandum stated that the availability of facilities for commitment of youths from the remaining districts would be announced as soon as possible. The memorandum continued:

"The Federal Correctional Institution at Ashland, Kentucky, is being converted into a Classification Center and treatment facility for youth offenders as contemplated by the Act, and most youths between the ages of 18 and 22 will be committed to this institution. The National Training School for Boys, Washington, D.C. will be designated for selected youth offenders. Under exceptional circumstances and where the youth presents an unusual custody risk, the Federal Reformatory, Chillicothe, Ohio may be designated initially."

On October 4, 1956, the Attorney General issued another memorandrum (memo no. 62, supplement No. 1) to the same addresses, informing them that the Director had certified that proper and adequate treatment facilities and personnel were available for the implementation of the YCA for the judicial districts of the Eighth, Ninth (except for Alaska, Hawaii, and Guam), and Tenth Circuits, and for the districts of Texas and Louisiana. The memorandum continued:

"The Federal Correctional Institution at Englewood, Colorado, is being converted into a classification center and treatment facility for youth offenders as contemplated by the Act, and most youths between the ages of 18 and 22 sentenced under the provisions of the Act from the districts listed above will be committed to this institution. Under exceptional circumstances and particularly where the youth presents an unusual custody risk, the Federal Reformatory, El Reno, Oklahoma, may be designated."

On June 16, 1975, the Director issued a policy statement (number 7300.13E) on the subject of "delegation of transfer authority." By this statement, the Director delegated to the chief executive officer of each federal facility, and to the Bureau's regional director of the appropriate region, the power to transfer offenders from one federal institution to another or to an approved non-federal facility. The policy statement included general guidelines, a statement of limitations and regulations, a statement on relationship with other governmental agencies, and a statement of procedures, to assist those to whom the transfer authority was being delegated. Also, attached to the policy statement was an appendix which provided current information as to the mission of each federal correctional institution and described the population, characteristics, commitment areas, security limitations, and significant program resources of each institution. The delegates were instructed to preserve the integrity of the missions of the respective institutions when selecting an institution as the place to which a particular offender was to be transferred.

The policy statement's guidelines provide that a "significant number of transfers will be for the purpose of placing newly committed offenders in institutions for which they more properly classify." They provide that at "an inmate's initial classification, the staff should attempt to plan a complete program for the entire period of confinement, including both institutional and post-release phases," and that in making the plan, "all of the resources of the Federal Prison System should be considered." Also, they state that generally, "transfer consideration is most appropriately given at the time of intake screening, initial classification, or at regularly scheduled interviews." They instruct that transfer should be considered when it becomes apparent that the offender's program or other needs will be best served by the programs at another facility, when the continuity of a training program or treatment program or both requires it, and when the resources of the present institution are inadequate to meet the offender's needs. It appears from the policy statement that more particular reasons for transfers may include: that the transferee institution is geographically closer to the point at which the offender is to be released; that poor institutional adjustment or attempts at escape indicate the need for closer supervision and controls; that medical attention is required or that it has been completed; that work release or study release is possible at the transferee institution; that the transferee is a community center; that overcrowding at the transferor institution requires it; or that there is a need to build up the population at the transferee institution.

With specific reference to the YCA, policy statement 7300.13E provides:

"*Youth Corrections Act* commitments shall be classified at the receiving institution, where the initial parole hearing will also be given. Following this hearing, or any appropriate time thereafter, the youth offender may be transferred by delegated authority to another more appropriate *youth* institution without referral to the Regional Case Management Branch. Youth offenders recommended for an adult correctional facility at the time of initial classification or at any later date, shall be referred to the Regional Administrator, Case Management Branch for approval. [At this point reference is made to another portion of policy statement 7000.13E relating to the timing of transfers in relation to initial parole hearings for YCA offenders. The reference does not appear to be pertinent to the issues in the present cases.]

"Any youth offender, having once been authorized for transfer to an adult Federal Correctional Institution, may be transferred under delegated authority to some other, more appropriate, adult FCI. However, any youth offender authorized for transfer to a penitentiary by the Regional Office may not be transferred to another penitentiary under delegated authority; each transfer of this nature must be approved by the Regional Case Management Branch."

In the descriptions of individual correctional institutions embodied in Appendix A to policy statement 7300.13E, there are occasional references to YCA, but there is no systematic statement of those to which YCA offenders may or may not be committed initially or transferred. As to Oxford specifically, there is no reference to YCA; it is said that the "population is composed of medium to long term young male adults," that Oxford is not suitable for juvenile offenders and that the age range is "21 to 28 at time of commitment."

Among the 56 institutions operated by the Bureau of Prisons, there are 12 facilities which are classified either as juvenile and youth institutions (4) or as young adult institutions (8).

Apparently as a matter of operating policy, not made explicit in memorandum no. 64, memorandum no. 62 (supplement no. 1), or policy statement number 7300.13E, above, the Bureau has designated these 12 institutions as the standard institutions for initial commitment of prisoners sentenced under the YCA.

The Bureau does not maintain any institution which is used exclusively for prisoners serving YCA sentences (hereafter referred to as "YCA offenders"). At least 27 percent of the population of each Bureau of Prisons institution is composed of prisoners serving adult sentences (that is, sentences not imposed under YCA).

The Federal Correctional Institution, Oxford, Wisconsin, is classified as a medium security young adult institution. The inmates at Oxford are persons who have been committed to medium and long-term sentences, and they have an age range of 21 to 28 years at the time of commitment. The average age of all inmates at Oxford on May 5, 1976, was 24.98 years.

Among the May 5, 1976, population at Oxford, 12 percent of the inmates were serving commitments under YCA sentencing provisions and the remaining inmates were serving commitments under adult sentencing provisions. Persons serving YCA sentences at Oxford are not separated from those serving adult sentences, either in their treatment programs or in their housing units.

The Bureau does not maintain any institutions which are used exclusively as centers for initial study or classification of prisoners, but instead uses each of its institutions as the site of a classification center for prisoners designated to serve sentences there. It is an infrequent occasion on which, either before or after the admission and orientation program at such institution has been completed, the initial designation of an institution for service of sentence is changed because it has been determined that an improper designation has been made.

Upon arrival at Oxford, new inmates are placed in an admission and orientation program, which lasts approximately three weeks and which provides new inmates with information about the treatment programs available at the institution. The new inmates are given physical and dental examinations, and undergo educational and psychological testing.

At the conclusion of the admission and orientation period at Oxford, an inmate is assigned to one of three functional units there, on the basis of an evaluation by the institution's psychology department of the personality traits observed and studied by the case manager, correctional counselor, and unit officer during the admission and orientation period. The three functional units at Oxford are divided into: (1) the most manipulative and criminally oriented inmates; (2) the inmates least likely to revert to crime when released; and (3) an intermediate group of inmates. About two weeks after an inmate has been assigned to one of the three functional units, a classification interview is provided him by four staff members to discuss his treatment needs, goals, and institutional program preferences. No distinction is made between YCA and non-YCA offenders in the course of this admission, orientation, and assignment procedure.

Oxford was originally designed architecturally by the State of Wisconsin as an institution for youth offenders, and since its acquisition by the Federal Bureau of Prisons it has always been used by the Bureau as an institution for youthful offenders. The ratio of inmates to case managers is 63 to 1, and to counselors 75 to 1. At federal adult institutions, equivalent ratios on the average are 100 to 1, and 85 or 90 to 1.

The rehabilitative programs available to inmates at Oxford include adult basic education, general educational development, 11 college courses (for the spring semester of 1976) taught by the faculty of the University of Wisconsin at Baraboo, one group counselling program conducted by a clinical psychologist, additional group counselling programs, vocational training in food management leading to an associate of arts degree, vocational training in drafting, transactional analysis group therapy, a self-improvement organization seminar conducted by inmates, a self-improvement seminar conducted by outside consultants, and federal prison industries training in plastic products manufacturing and electronic cable assembly.

Inmates are not assigned to the various programs. The inmates are responsible for voluntary selection and participation in programs. YCA offenders are given no priority in these programs.

The Bureau has determined that the 12 institutions which it designates for the confinement of YCA offenders, and the treatment programs made available there to YCA offenders, meet the requirements of the YCA. Based upon criteria of age, offense, prior record, security requirements, and special treatment needs, the Bureau has determined that many other offenders not sentenced under YCA, will also benefit from confinement in the same institutions, and from the opportunity to participate in the same treatment programs. Therefore, the members of the latter category (which is far more numerous than the YCA offender category) are confined in the same institutions and are given the opportunity to participate in the same treatment programs as those designated for YCA offenders.

As of spring 1976, there were approximately 2700 YCA offenders in confinement in the United States. If they were confined in a few institutions, perhaps five, from which all other offenders were excluded, it would be more difficult in some degree to maintain ties with their families and communities than it is when YCA offenders are distributed among 12 institutions.

With respect to administrative remedies, although the records in these cases are not explicit, the parties appear to agree, and I find, that the administrative procedures available to these petitioners are as they are described in *Cravatt* v. *Thomas*, 399 F.Supp. 956, 961 (W.D. Wis. 1975).

*75–C–493*

On July 30, 1975, petitioner Brown was convicted of possession of: 3 unregistered destructive devices (Molotov cocktails); destruction by explosion of a Planned Parenthood clinic in Detroit, Michigan; and causing personal injury to a doctor. On the date of conviction, petitioner Brown was 20 years old. He has no other adult convictions. He has served one juvenile commitment for breaking and entering, and has been arrested several times. On July 30, 1975, he was sentenced by the United States District Court for the Eastern District of Michigan to an 8-year commitment "for treatment and supervision pursuant to Title 18, U.S.C. § 5010(c)."

After being temporarily detained one day at the Oakland County Jail, Pontiac, Michigan, and eight days at the Federal Correctional Institution, Milan, Michigan, petitioner was transported to the Federal Correctional Institution, Oxford, which was designated by the Bureau of Prisons as the place for service of petitioner's sentence. At no time prior to incarceration at Oxford was petitioner committed to any classification center or agency for study and analysis.

Upon arival at Oxford, petitioner was placed in the institution's admission and orientation program. At the conclusion of that program petitioner was placed in the functional unit provided for those inmates considered to be the most manipulative and criminally oriented.

Petitioner Brown has participated in several educational programs since his arrival at Oxford. He has not been separated from inmates serving adult sentences in either his treatment programs or in his housing unit.

*75–C–544*

Petitioner Weaver was found guilty of armed bank robbery. On the date of conviction, petitioner Weaver was 23 years old. The United States District Court for the Northern District of Ohio, Eastern Division, found that he was "suitable for handling under the Federal Youth Correction Act as a young adult offender, Title 18, Section 4209, U.S.C.," and on June 18, 1975, sentenced him to a term of imprisonment of eight and one-half years, pursuant to 18 U.S.C. § 5010(c).

On July 1, 1975, petitioner Weaver was delivered to the Federal Correctional Institution at Milan, Michigan. On August 20, 1975, he was transferred to the Federal Correctional Institution, Oxford. Petitioner has not been separated from inmates serving adult sentences in either his treatment programs or his housing unit.

*75–C–607*

On April 7, 1975, petitioner Walls was sentenced by the United States District Court for the District of Minnesota pursuant to 18 U.S.C. § 5010(c). On April 17, 1975, he was delivered to the Federal Correctional Institution at Oxford, Wisconsin. He has not been separated from inmates serving adult sentences in either his treatment programs or his housing unit.

## OPINION

In 75–C–493 and 75–C–544 respondents contend that since petitioners have not exhausted their administrative remedies, their claims should not be considered by this court at this time.[1]

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[1] I conclude that the controversies in these cases satisfy the criteria for ripeness set forth in *Cravatt v. Thomas*, 399 F. Supp. 956, 965–966 (W.D.Wis. 1975).

In the absence of a statutory requirement, the application of the exhaustion doctrine to a particular case is within the court's discretion. *Cravatt* v. *Thomas*, 399 F.Supp. 956, 968 (W.D.Wis.1975). The more closely the particular administrative procedures resemble court procedures, the more forceful the argument that the aggrieved party should be required to exhaust those procedures. Inmate grievance procedures differ from court procedures in significant respects. Accordingly, respondents in cases such as these must "make a showing of particularized need" that an inmate should be required to exhaust the inmate grievance procedures. *Cravatt* at 969. Respondents have failed to make this showing.

Respondents make two somewhat contradictory arguments. The first is that since the petitioners are seeking a transfer to another institution which is more suitable for service of their sentence, the issue is factual, and the Bureau should be given the opportunity to consider whether the facts of each petitioner's particular case warrant a transfer. This argument views the petitions too narrowly. They are not simply claims by members of the general population of the federal correctional institutions system that in their particular cases one existing correctional institution is more suitable than another, but rather they are claims that respondents are failing to confine them as YCA offenders in the kind of institution, and to afford them the kind of programs, which Congress directed. Even were I to view petitioners' claims so narrowly, respondents have made no showing that the procedures available to petitioners would serve as adequate fact-finding vehicles, or that the administrative record would provide any assistance in the course of subsequent judicial inquiry.

Respondents' second argument is that even though this court might generally be reluctant to require exhaustion absent a more formal administrative procedure, a more formal procedure is not necessary in these cases because the thrust of petitioners' contentions is directed at the legality of a general Bureau policy, rather than at factual determinations by the Bureau in the particular cases. But if the issue in question in these cases is purely legal, a requirement of exhaustion is inappropriate. *Cravatt*, *supra*, at 970.

I conclude that exhaustion of the Bureau's grievance procedures should not be required in these cases.

A. The statutory scheme.

Section 4082 of Title 18, which was enacted long before 1950, when the YCA became law, provides in part:

"(a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.

"(b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another."

The Attorney General has delegated to the Director of the Bureau of Prisons the power to designate places of confinement conferred by § 4082.28 C.F.R. § 0.96(c).

The YCA sets forth the discretionary use of federal judges a system for the sentencing and treatment of eligible young offenders. As defined in 18 U.S.C. §§ 5006(e) and (f), a "youth offender" is a person under the age of twenty-two at the time of conviction, and a "committed youth offender" is one who is sentenced pursuant to 18 U.S.C. §§ 5010(b) or (c):

"(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter; or

"(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter."

Sections 5017(c) and (d) provide:

"(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

"(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction."

Under certain circumstances a federal judge may also sentence young adult offenders (offenders between the ages of 22 and 25, inclusive, at the time of conviction) pursuant to the provisions of the YCA. 18 U.S.C. § 4216.

Section 5014 states, in part:

### CLASSIFICATION STUDIES AND REPORTS

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days." [2]

Section 5015(a) states:

"(a) On receipt of the report and recommendations from the classification agency the Director may—

"(1) recommend to the Division [now to the Parole Commission] that the committed youth offender be released conditionally under supervision; or

"(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

"(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public."

Section 5011 provides:

### "TREATMENT

"Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such insitutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment."

Section 5012 provides:

"No youth offender shall be committed to the Attorney General under this chapter until the Director shall certify that proper and adequate treatment facilities and personnel have been provided."

Other pertinent provisions of the YCA will be referred to in the following discussion.

B. The Congressional history.

The legislative history reveals that the YCA was the outgrowth of studies which concluded that the period of life between 16 and 22 years of age is the time when special factors operate to produce habitual criminals.[3] Then existing methods of dealing with criminally inclined youths were found inadequate in avoiding recidivism.

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[2] At the time each of these petitioners was sentenced, the remainder of Section 5014 read: "The agency shall promptly forward to the Director and to the Division a report of its findings with respect to the youth offender and its recommendations as to his treatment. At least one member of the Division, or an examiner designated by the Division, shall, as soon as practicable after commitment, interview the youth offender, review all reports concerning him, and make such recommendations to the Director and to the Division as may be indicated." These provisions have since been modified to provide that the agency report go to the Parole Commission and that the youth offender receive a parole interview promptly after commitment.

> "By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it." H.R. Rep. No. 2979, 81st Cong., 2d Sess. (1950) (hereinafter H.R. Rep. No. 2979); 1950 U.S. Code Cong. Service, p. 3985.

As a result of this dissatisfaction with existing methods of dealing with young offenders, Congress established a system of sentencing and treatment designed to:

> "* * * promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so will avoid the degenerative and needless transformation of many of those persons into habitual criminals. * * * The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective idea of rehabilitation." H.R. Rep. No. 2979; 1950 U.S. Code Cong. Service, pp. 3983, 3985.

Thus, by enactment of the YCA, Congress hoped to provide a better method for treating certain young offenders to be selected by the sentencing judges, and thereby to rehabilitate these offenders. *Dorszynski* v. *United States*, 418 U.S. 424, 433, 94 S. Ct. 3042, 41 L.Ed.2d 855 (1974). Rehabilitation is the "underlying theory" of the YCA (H.R. Rep. No. 2979; 1950 U.S. Code Cong. Service, p. 3985). This House committee report, as well as Senate Report No. 1180, 81st Congress, 1st Session, 1949, emphasize the objective of rehabilitation as contrasted with what were perceived as traditional goals in the confinement of non-YCA offenders. They include pointed discussion of the programs of individualized treatment embodied in the English Borstal system, on which the YCA was said to have been modeled.

C. The merits.

The general and pronounced pattern in the federal correctional scheme is that sentencing judges decide whether an offender is to be imprisoned, but "imprisonment" is left undefined by Congress and by the court's judgment. The word is defined, and the everyday reality of life in confinement is determined administratively by the Bureau of Prisons. The Bureau decides where the offender is to be confined and to what regimen he or she is to be subjected. If changes in the places or the forms of confinement are to occur, either for a particular offender during a particular term or for offenders generally throughout the system, the decisions are to be made by the Bureau.

The YCA represents a sharp departure from this pattern of remarkably wide administrative discretion. The harsh question for the court in the present cases is how to respond when it appears that an executive agency is failing to obey a legislative command. Congress has said rather bluntly that offenders aged 18 through 25, sentenced by courts under YCA, are to be segregated from other offenders for purposes of classification and then treatment. The fact appears to be that the Bureau is not segregating them.

When the question is put so badly, the answer may appear easy. It is not. The reason it is not is that the Bureau has been left to struggle with painful anomalies. The source of these anomalies is that the Congressional departure from the general pattern of administrative discretion is limited to a single group of offenders. The result is that the Bureau is called upon to reconcile a relatively rigid institutional arrangement reflecting a relatively specific correctional theory, imposed by the Congress as to one group of offenders, with a highly flexible institutional arrangement responsive to a variety of correctional theories administratively developed for all other offenders. It is not for me to evaluate the wisdom of either the general pattern of administrative discretion or the YCA departure from the pattern. But some comments on the anomalies arising from their co-existence may illuminate the issue.[4]

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[3] Although the YCA has been amended a number of times since 1950, the amendments are not relevant to the issues presented in these cases.

[4] My reservations about the very institution of prisons, and my belief that they lie as a dark continent in federal constitutional law, have been expressed. *Morales* v. *Schmidt*, 340 F.Supp. 544 (W.D.Wis.1972). But in the present cases, there is no challenge to the federal constitutionality of any particular attribute of confinement, such as censorship, limits on visitation, and so on.

A core difficulty lies in assigning a readable meaning to the term "rehabilitation," and thuse in prescribing the ingredients of a rehabilitative treatment program.

There is no doubt that in enacting the YCA, Congress had in mind some rather specific kind of program. Under the provisions of §§ 5010(b), 5017(c) and 5020, if one is convicted of a crime for which the maximum sentence is two years, for example, and if the sentencing judge chooses to impose sentence under the YCA, one may be confined for as long as six years. The hoped for rehabilitation obviously comprises "the quid pro quo for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison." *Carter* v. *United States*, 113 U.S. App. D.C. 123, 306 F.2d 283, 285 (1962). In accord, *Cunningham* v. *United States*, 256 F.2d 467, 472 (5th Cir. 1958); *Sero* v. *Oswald*, 351 F.Supp. 522, 526, n. 4 (S.D.N.Y. 1972). Also, under § 5010(d), if the offender is under 22 years of age at the time of conviction, the court must impose a YCA sentence unless the court affirmatively finds that the offender "will not derive benefit from treatment under subsection (b) or (c) * * *." And under § 4216, if the offender is 22 years of age or older but not yet 26, the court may impose a YCA sentence if it affirmatively finds reasonable grounds to believe that the offender "will benefit from the treatment provided under the [YCA] * * * ." These provisions of the YCA would be inexplicable had not Congress intended the treatment of YCA offenders to differ from what it understood to be the prevailing treatment of non-YCA offenders, young and old.

Yet the term "treatment" which appears throughout the Act, §§ 5010(b), 5010(c), 5010(d), 5010(e), 5011, 5012, 5014, 5015(a), 5020, 5025(a), 5025(b), and 5025(c), is defined no more precisely than "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders * * *." § 5006(f). If the Federal Correctional Institution at Oxford housed only YCA offenders, and if the program or programs offered were identical to those now offered to all inmates there, I could not conclude that the Bureau was failing to provide the "treatment" required by the YCA. No doubt, there is a wide array of rehabilitatively oriented treatment programs, all of which would fall within the range permitted by the YCA. I will refer to such programs in this opinion as "YCA-type" treatment programs.[5]

A second difficulty in dealing with this Congressional intervention with respect to only one segment of the population of federal correctional institutions is related to the first The legislative history of the YCA suggests that in 1950 Congress viewed the federal correctional institutions as a monolith of retribution in which it was necessary to carve legislatively a niche of rehabilitation for a certain category of young offenders. I doubt that this view was accurate in 1950, but if so, it is no longer accurate. For some time, the theory and practice of corrections have been in a highly volatile state. See, generally, for example, Norval Morris, *The Future of Imprisonment* (University of Chicago Press, 1974); II Corrections Magazine, March 1976, at 3–8, 21–26. Considerable flexibility has developed within the federal correctional institutions—as well as within many state institutions—with varying degrees of emphasis upon retribution, rehabilitation, specific and general deterrence, and simple physical incapacitation, with yet more variety in techniques and methods intended to achieve one or more of these goals. Although controversy persists particularly whether rehabilitation can be coerced during physical confinement, and although the quantity and quality of rehabilitative opportunities available on a voluntary basis leave much to be desired, nevertheless such opportunities in the form of education and counseling and psychiatry, among others, do exist for older as well as younger offenders, for those with much criminal experience as well as for those with little. I have no doubt that there remain in the federal correctional system certain physical facilities and certain treatment programs that would fall clearly outside the permissible range for YCA offenders generally. But the current reality is that YCA-type physical facilities and YCA-type treatment programs are being afforded to many confined offenders who were not sentenced under YCA. It would surely be unreasonable to assume, and so to construe the YCA, that Congress intended to bar from YCA-type treatment programs all offenders not sentenced under the YCA.

This brings us to a third and related difficulty: that the responsibility for deciding whether certain offenders should participate in YCA-type treatment programs has been divided between sentencing judges and the Bureau.[6] It is true that for those under 22 years at the time of conviction, and for those 22 or older but under 26 years, the responsibility for the initial decision is assigned to the sentencing judges, and that if the sentencing judges decide affirmatively, the Bureau may not disregard, initially at least, the judicial command that the offenders participate in YCA-type treatment programs. But even for those under 22 whom the sentencing judges have decided will not derive benefit from YCA-type treatment programs (§ 5010(d)), the Bureau is not foreclosed from providing the opportunity to participate in such programs. This is more clearly true for those 22 or older but under 26 as to whom the sentencing judges have refrained from affirmative findings that the offenders will benefit from YCA-type treatment programs (§ 4216). It is yet more clearly true of those for whom sentencing judges are powerless to prescribe YCA-type treatment programs, namely, all those 26 or older at time of conviction. During the period of confinement, the Bureau has abundant opportunity to observe from offenders' attitudes and performances whether participation in YCA-type treatment programs is indicated. In any given case, this opportunity for the Bureau persists long after the brief moment at which the sentencing judge makes his or her evaluation. Whether similar or divergent standards are used by sentencing judges, on the one hand, and the Bureau, on the other, in discharging the dividend responsibility for decision has not been shown and is a question probably not amenable to empirical determination. The same may be said of a comparison of the degrees of care exercised in the judicial and administrative processes. But it is reasonable to suppose that the standards, vague as they no doubt are, are highly similar, and it seems necessary to presume that an adequate degree of care marks both the judicial and the administrative processes.

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[5] The uncertainties concerning the kind of treatment program called for by the YCA are sharply revealed in the several opinions by members of the court in *Harvin* v. *United States*, 144 U.S.App.D.C. 199, 445, F.2d 675 (1971).

[6] This discussion of the comparative roles of the sentencing courts and the Bureau is limited to cases in which there is to be physical confienement. Nor does it reach the matter of the opportunity under the YCA for the setting aside of convictions. § 5021.

Thus, absent the enactment of the YCA, it would appear that the following would be a rational arrangement: The Bureau would classify initially all committed offenders 18 years of age or older, and would reexamine their classifications from time to time, in order to identify those for whom YCA-type treatment programs, that is, rehabilitatively oriented programs, should be provided. The Bureau would determine the content of such programs and the physical facilities within which they would be provided, and would make such changes in manner and places of treatment as might appear necessary or desirable from time to time. With respect to the grouping of those deemed eligible for YCA-type treatment, the Bureau would exercise its discretion. If the Bureau considered it sound theory and practice to avoid "herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened," as Congress apparetntly believed in 1950, the Bureau could develop standards to effect such segregation. However, it is not graven in stone that confinement exclusively with one's peers in age is more effective or desirable than confinement in an institutional community whose membership more closely reflects the age variations encountered outside correctional institutions. If the Bureau considered it sound, it could effect integration among the young and the mature, the novice and the sophisticate, the impressionable and the hardened, or, more sensibly, it could attempt evaluations of the quality of the maturity, sophistication, and hardness of particular offenders in determining the groups within which they should reside.[7]

Against the background I have described and in view of the specific language of the YCA, there must be decided the central question in this case: how much discretion remains in the Bureau in the cases of offenders committed by sentencing judges under the YCA (to whom I will continue to refer as "YCA offenders")? More particularly, the questions are: (1) whether a YCA offender must be the subject of special classification procedures; and (2) whether, once it has been determined through the classification procedures that he or she is to be physically confined, the YCA offender must be segregated from non-YCA offenders for treatment.

(1) Classification.

Following the decision by a sentencing judge to commit a young person for treatment under the YCA, the Bureau is called upon by the Act to engage in a special classification process in special classification centers or agencies. This classification study is clearly required to precede a decision by the Director as to the appropriate treatment in a particular case and therefore, clearly to precede the designation of the particular institution within which the offender is to be confined § 5015(a). From Memo No. 64 dated January 19, 1954 and Memo No. 62 (supplement no. 1) dated October 4, 1956, it appears that the Bureau shared this understanding in the years closely following upon the enactment of the YCA. The institution at Ashland, Kentucky, was "being converted into a classification center and treatment facility as contemplated by the Act," as was the institution at Englewood, Colorado, and "most youths between the ages of 18 and 22 will be committed to" one or the other of these institutions, depending upon geography. The administrative history between about 1956 and about 1975 is unrevealed in this record,[8] but it does reveal that there is presently no compliance, save only that there is operative some generalized Bureau decision that one or another of a group of 12 institutions will be designated as the initial place of confinement and the place at which the classification process will occur in the cases of YCA offenders, and that none of another group of 44 institutions will be so designated.

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[7] The present record does not reveal the quality of the maturity, sophistication, or hardness of the particular non-YCA offenders who are presently confined with the petitioners at Oxford. Petitioners have presented their cases on the flat contention that no such integration is permissible, without regard to the characteristics of the particular non-YCA offenders with whom they are confined.

I do not suggest that this record supports a finding that the designation of the place of confinement is not performed YCA case by YCA case, or that it is not performed sensitively and intelligently. But the record does compel a finding that the designation does not involve or await the special classification studies for YCA offenders provided for in § 5014, and apparently intended in 1954 and 1956 to be performed at Ashland and Englewood when they had been converted into "classification centers * * * as contemplated by the Act."

Conceivably the 12 institutions currently designated as the places of confinement for YCA offenders could be viewed as the modern counterparts of the YCA classification centers to which Ashland and Englewood were to be converted. Thus, rather than only two such YCA classification centers, 12 would now be available. But this theory would be vindicated only if it were shown that each of the 12 centers performs a special YCA classification process for the YCA offenders, after which each YCA offender is promptly committed for confinement to that one of the 12 institutions most appropriate in his or her case. It is true that in policy statement 7300.13E, issued June 16, 1975, on the subject of interinstitutional transfers of all offenders, YCA and otherwise, there is a suggestion that the initial designation is to be viewed as rather tentative—as simply a designation to a "classification center," so to speak, physically located within a particular institution at which the classification process is to be engaged in, followed by a determination as to which one of the 56 institutions would be most appropriate and by a prompt transfer thereto. But no showing has been made in this record that this is how the classification and designation system actually works nationwide or at Oxford, or that there is anything special about how it works in the cases of YCA offenders either nationwide or at Oxford. Rather, it appears that at Oxford, for YCA offenders and non-YCA offenders alike, the admission and orientation program looks to a decision as to which one of the three functional units at Oxford is appropriate to the case.

It is plain that the classification procedure afforded YCA offenders as a category is not distinct and segregated from that afforded many non-YCA offenders as another category. This lack of discrimination between the two categories was not contemplated by Congress when it enacted the YCA.[9]

(2) Treatment.

Subject only to the qualifying phrase "insofar as practical," Congress has expressly commanded the Director to designate, set aside, and adapt institutions and agencies to be used only for treatment of YCA offenders, and to segregate youth offenders from other offenders. § 5011. From this language it appears that Congress views segregation itself as an essential element of the treatment to be afforded those offenders committed by sentencing judges under the YCA.

But there is not a single Bureau institution which is used only for the treatment of YCA offenders. Whether there is any institution housing both YCA offenders and non-YCA offenders within which these two categories are segregated is not clear from this record, but it is clear that they are not segregated at Oxford.

Faced with this apparent discrepancy between the statutory command and the actual practice, I understand respondents to argue, first, that despite § 5011 the Bureau enjoys unlimited discretion in deciding the places of confinement and the treatment programs for all offenders, YCA and otherwise; and, second, that in fact, "insofar as practical," institutions and agencies have been designated, set aside, and adapted for use only for treatment of YCA offenders, and YCA offenders are segregated from other offenders.

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[8] Some difficulty has arisen from the apparent absence of a continuing and formalized procedure for the certification by the Director that proper and adequate YCA treatment facilities and personnel are in place. § 5012. See *Robinson* v. *United States*, 474 F.2d 1085, 1090–1091 (10th Cir. 1973); *United States* v. *Lowery*, 355 F.Supp. 519 (D.D.C. 1971).

[9] It should be noted that with respect to classification procedures, as distinct from treatment, the Act contains no saving provision to the effect that there be segregation only insofar as practical.

It is true that 18 U.S.C. § 4082(b) confers broad authority upon the Attorney General to designate "any available, suitable, and appropriate institution or facility" for the confinement of persons committed to his or her custody by sentencing courts and for the transfer of such persons from institution to institution, and that the Attorney General has delegated this authority to the Director. 28 C.F.R. § 0.96(c). Also, § 5015(a) of the YCA itself provides that upon receipt of the report and recommendation from the classification agency the Director may: recommend to the Commission that the offender be conditionally released; transfer the offender to an agency or institution for treatment; or order the offender "confined and afforded treatment under such conditions as he believes best designed for the protection of the public." Section 5011 of the Act provides that treatment shall be undergone "in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment."

I am aware, also, that in *Sonnenberg* v. *Markley*, 289 F.2d 126 (7th Cir. 1961), it was held that the choice of the place of confinement of a person committed to the custody of the Attorney General under the Juvenile Delinquency Act (18 U.S.C. § 5031 et seq.) lay so wholly within the discretion of the Attorney General that a penitentiary might be chosen. However, at that time the Juvenile Delinquency Act contained no requirement that, following a finding of delinquency, juvenile delinquents were to be confined separately from other persons. In 1974, the Act was amended to require such segregation. 18 U.S.C.A. § 5039 (1976).[10]

Familiar rules of construction require that the authorization contained in the broad sweep of § 4082(b) be considered limited by the later enacted YCA which was directed to a particular category of offenders. Also, the broad language of §§ 5015(a) and 5011 must be construed within the narrowing and interrelated provisions of YCA which so clearly confine the Director's exercise of discretion as to choice of institutions and choice of treatment.

I conclude that the Bureau does not enjoy complete discretion in designating the place of confinement of YCA offenders. On the contrary, subject to an important qualification, § 5011 plainly requires that institutions and agencies be designated, set aside, adapted, and used only for the treatment of YCA offenders, and that YCA offenders be segregated from non-YCA offenders.

Therefore, the ultimate question must be answered: whether the Bureau's practice is permissible because the words "insofar as practical" appear in § 5011, which reads:

> "TREATMENT
>
> "Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment."

It is not easy to find a construction of § 5011 which gives effect to its arrangement and its punctuation, and also gives common sense effect to "insofar as practical."

One conceivable construction is easy to discard. In this opinion I have discussed at length several anomalies resulting from a Congressional departure, with respect to a certain group of offenders, from the dominant and general pattern of remarkably wide administrative discretion. But it cannot be supposed reasonably that by inserting the words "insofar as practical" in § 5011, Congress intended to permit the Bureau to decide that, by reason of these anomalies or by reason of added costs in facilities and staff, the entire statutory scheme of segregation is impractical and then simply to refrain, wholesale, from implementing the scheme. So to construe the Act would be to infer Congressional willingness that its major command be nullified by the executive. That is, it would be to infer Congressional acquiescence in executive recalcitrance similar to the practice of executive impoundment of Congressionally appropriated funds, a practice so vigorously and recently criticized by Congress. Such a radical construction must yield to a more reasonable view.

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[10] In *Coats* v. *Markley*, 200 F.Supp. 686 (S.D. Ind. 1962), it was held, with heavy reliance upon *sonnenberg, supra*, that in the choice of the place of confinement of a person sentenced under the YCA, the Attorney General enjoys discretion as complete as that the Attorney General enjoyed under the Juvenile Delinquency Act, as the latter act read when *Sonnenberg* was decided. In *Coats*, the court made no reference to the explicit provisions of the YCA calling for segregated confinement. I consider it necessary to attempt a fresh analysis.

The last sentence of § 5011, which opens with "insofar as practical" consists of three clauses: (1) "such institutions and agencies shall be used only for treatment of committed youth offenders," (2) "and such youth offenders shall be segregated from other offenders, (3) "and classes of committed youth offenders shall be segregated according to their needs for treatment." Clause (3) appears to have no bearing on the present cases. Two initial questions concerning clauses (1) and (2) are: whether "insofar as practical" modifies only (1) or both (1) and (2); and whether (1) and (2) can be rescued from redundancy.

I conclude that "insofar as possible" modifies both (1) and (2); there seems no reason to attach this safety valve to the requirement that the institutions and agencies be used only for YCA offenders, but to withhold it from the requirement that YCA offenders be segregated from other offenders.

The apparent redundancy between (1) and (2) is more difficult to solve. If a group of YCA offenders are housed in an institution used only for the treatment of YCA offenders, it follows that they have been segregated from non-YCA offenders. But I am obliged to give meaning to each clause and thus to avoid redundancy, if I reasonably can, and this seems possible. That is, I conclude that if and when it is not practical to house one or more YCA offenders in an institution or agency used only for the treatment of YCA offenders, and the said YCA offender or YCA offenders are housed with non-YCA offenders, then, insofar as practical, the two categories of offenders are to be segregated from one another within the institution or agency in which they are both housed. An example might be a training program in a particular skill which the Bureau desires to make available both to YCA offenders and to non-YCA offenders and for which unusually expensive equipment and high salaried instructors are required. Practical considerations, particularly the conservation of funds, might dictate that a single physical facility be maintained for this particular training program, and that there be brought successively to that facility for the necessary training periods "classes" consisting of some YCA offenders and some non-YCA offenders. While it might be impractical for the two categories to attend segregated classes and laboratories, it might nevertheless be practical to segregate them for all other purposes within the single facility during the training period.

I have undertaken to analyze the last sentence of § 5011. There remains the need to synthesize that last sentence with the two sentences which precede it.

The first sentence reads: "Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment." In this sentence, no mention is made of segregation of YCA offenders from non-YCA offenders, and the references to maximum security institutions and to hospitals, for example, may be thought to imply non-segregation.

The second sentence reads: "The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment." Obviously, this must be read in conjunction with the first sentence, and it seems to imply that from the universe of all the "institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies," then existing or later to come into existence, the Bureau was to designate certain ones, set them aside for YCA offenders, and adapt them for treatment of YCA offenders. Read together, the first two sentences imply at least some degree of segregation of YCA offenders because they would be housed within those institutions and agencies set aside and adapted for their treatment.

Then, of course, the first clause of the third and final sentence makes explicit what was implicit, namely, that those institutions and agencies designated and set aside from the all-encompassing universe of institutions and agencies, and adapted by the Bureau for the treatment of YCA offenders, are to be used only for that purpose, "insofar as practical."

From all this, I can conclude only that Congress has commanded that within a universe consisting of all the institutions and agencies housing all offenders sentenced to confinement by federal courts, there was to be created and there is now to be maintained a smaller universe consisting of those institutions and agencies designated, set aside, and adapted for the treatment of the YCA offenders. And I can conclude only that the institutions and agencies within this smaller universe are to be used exclusively for the treatment of YCA offenders. To speak more concretely, I conclude that the YCA requires that the 2700 or so YCA offenders in confinement (to use the spring 1976 figure) are to be distributed within a segregated network of maximum security, medium security, and minimum security institutions, some of which (presumably the minimum security institutions) would be hospitals, farms, and forestry camps, and some of which (perhaps maximum and medium, as well as minimum security institutions) would be training schools, and some of which (with provision for whatever degree of security may be appropriate) would be yet "other agencies that will provide the essential varieties of treatment."

However, this segregation of YCA offenders within the smaller universe of YCA institutions and agencies need be maintained only "insofar as practical."

It is conceivable that because Congress envisaged a transitional period in the wake of enactment of the YCA, the phrase "insofar as practical" was inserted in part to ease the transition. But it is unlikely that this was the exclusive reason, particularly in light of § 5012, which defers the time at which judges might commence to commit offenders under YCA until the time at which the Director should certify "that proper and adequate treatment facilities have been provided."

I conclude that the presence of the phrase "insofar as possible" in § 5011 means that the Bureau is free to depart from the statutory norm of segregation occasionally, in the presence of unusual and unforeseen circumstances, and for only so long as may be necessary. I construe it to mean, also, that the Bureau is free to dpart from the statutory norm for longer periods of time, even semi-permanently, with respect to limited numbers of YCA offenders. One example of such an exception might be the need for an unusually expensive and specialized training facility of the sort I have mentioned. Another example might be that if experience reveals that at any given time a number of YCA offenders require confinement under maximum security conditions, but that this number is consistently small (50 to 100, for example), the Bureau would be free to house them in existing maximum security institutions in which non-YCA offenders are also housed; provided, however, that within such maximum security institutions, the YCA offenders are segregated from the other offenders "insofar as practical."

By 1977, of course, any reasonable transition period under YCA is long past. In the present cases there has been no showing that the departures from a scheme of segregation are only occasional, that they are compelled by unusual circumstances, or that they have been brief. Nor has there been a showing that in the particular case of any of these petitioners, the Bureau has concluded, either at the time of the initial designation of a place of confinement or subsequently by reason of his behavior during confinement, that it is necessary that he be specially excepted from a scheme of segregation. On the contrary, the record shows that the Bureau has made non-segregation the continuing norm.

I conclude that in the case of petitioner Brown, the Youth Corrections Act has been violated by the Bureau's failure, prior to the designation of Oxford as his place of confinement, to perform a separate and distinct classification procedure in the kind of classification center contemplated by the Act. In the case of each of the three petitioners, I conclude that the Youth Corrections Act has been violated, and is being violated, by confinement in an institution not used only for youth offenders committed under the Act and by confinement in which petitioners are unsegregated from offenedrs not committed under the Act.

## *Order*

It is ordered that the petition for habeas corpus in each of the above-entitled cases is granted, and that:

1. Petitioner Brown in 75–C–493 is to be released unconditionally on the 91st day following entry of this order unless, prior to that time, he is placed in a center used solely for the classification of offenders committed by sentencing courts pursuant to the Youth Corrections Act; and unless he is thereupon accorded a procedure separately and distinctly designed for the classification of offenders so committed; and unless, if the director then orders him to be confined, he is then confined in an institution used only for offenders so committed.

2. Petitioner Walls in 75–C–607 is to be released unconditionally on the 91st day following entry of this order unless, prior to that time, he is confined in an institution used only for offenders committed by sentencing courts pursuant to the Youth Corrections Act.

3. Petitioner Weaver in 75–C–544 is to be released unconditionally on the 91st dal following entry of this order unless, prior to that time, he is confined in an institution used only for offenders committed by sentencing courts pursuant to the Youth Corrections Act.

## APPENDIX 2

## TITLE 18, UNITED STATES CODE

### CHAPTER 402—FEDERAL YOUTH CORRECTIONS ACT

Sec.
5005. Youth correction decisions.
5006. Definitions.
5010. Sentence.
5011. Treatment.
5012. Certificate as to availability of facilities.
5013. Provision of facilities.
5014. Classification studies and reports.
5015. Powers of Director as to placement of youth offenders.
5016. Reports concerning offenders.
5017. Release of youth offenders.
5018. Revocation of Commission orders.
5019. Supervision of released youth offenders.
5020. Apprehension of released offenders.
5021. Certificate setting aside conviction.
5022. Applicable date.
5023. Relationship to Probation and Juvenile Delinquency Acts.
5024. Where applicable.
5025. Applicability to the District of Columbia.
5026. Parole of other offenders not affected.

§ 5005. Youth correction decisions

The Commission and, where appropriate, its authorized representatives as provided in section 4203(c), may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title.

§ 5006. Definitions

As used in this chapter—

(a) "Commission" means the United States Parole Commission;

(b) "Bureau" means the Bureau of Prisons;

(c) "Director" means the Director of the Bureau of Prisons;

(d) "youth offender" means a person under the age of twenty-two years at the time of conviction;

(e) "committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

(f) "treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

(g) "conviction" means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.

§ 5010. Sentence

(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings.

### § 5011. Treatment

Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

### § 5012. Certificate as to availability of facilities

No youth offender shall be committed to the Attorney General under this chapter until the Director shall certify that proper and adequate treatment facilities and personnel have been provided.

### § 5013. Provision of facilities

The Director may contract with any appropriate public or private agency not under his control for the custody, care, subsistence, education, treatment, and training of committed youth offenders the cost of which may be paid from the appropriation for "support of United States Prisoners."

### § 5014. Classification studies and reports

The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the abensence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview.

### § 5015. Power of Director as to placement of youth offenders

(a) On receipt of the report and recommendations from the classification agency the Director may—

(1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or

(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

(3) order the committed youth offender confined and afforded treatment

under such conditions as he believes best designed for the protection of the public.

(b) The Director may transfer at any time a commited youth offender from one agency or institution to any other agency or institution.

### § 5016. Reports concerning offenders

The Director shall cause periodic examinations and reexaminations to be made of all committed youth offenders and shall report to the Commission as to each offender as the Commission may require, United States probation officers and supervisory agents shall likewise report to the Commission respecting youth offenders under their supervision as the Commission may direct.

### § 5017. Release of youth offenders

(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission.

### § 5018. Revocation of Division orders

The Commission may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge.

### § 5019. Supervision of released youth offenders

Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of United States probation officers, supervisory agents appointed by the Attorney General, and voluntary supervisory agents approved by the Commission. The Commission is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by regulations adopted by the Commission.

### § 5020. Apprehension of released offenders

If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility any member of the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission.

### § 5021. Certificate setting aside conviction

(a) Upon the unconditional discharge by the Commission of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect.

(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.

§ 5022. Applicable date

This chapter shall not apply to any offense committed before its enactment.

§ 5023. Relationship to Probation and Juvenile Delinquency Acts

(a) Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation or be construed in any wise to amend, repeal, or affect the provisions of chapter 231 of this title or the Act of June 25, 1910 (ch. 433, 36 Stat. 864), as amended (ch. 1, title 24, of the D. of C. Code), both relative to probation.

(b) Nothing in this chapter shall be construed in any wise to amend, repeal, or affect the provisions of chapter 403 of this title (the Federal Juvenile Delinquency Act), or limit the jurisdiction of the United States courts in the administration and enforcement of that chapter except that the powers as to parole of juvenile delinquents shall be exercised by the Division.

(c) Nothing in this chapter shall be construed in any wise to amend, repeal, or affect the provisions of the Juvenile Court Act of the District of Columbia (ch. 9, title 11, of the D. of C. Code).

§ 5024. Where applicable

This chapter shall apply in the States of the United States and in the District of Columbia.

§ 5025. Applicability to the District of Columbia

(a) The Commissioner of the District is authorized to provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted of violations of any law of the United States applicable exclusively to the District of Columbia or to contract with the Director of the Bureau of Prisons for their treatment and rehabilitation, the cost of which may be paid from the appropriation for the District of Columbia.

(b) When facilities of the District of Columbia are utilized by the Attorney General for the treatment and rehabilitation of youth offenders convicted of violations of laws of the United States not applicable exclusively to the District of Columbia, the cost shall be paid from the "Appropriation for Support of United States Prisoners".

(c) All youth offenders committed to institutions of the District of Columbia shall be under the supervision of the Commissioner of the District of Columbia, and he shall provide for their maintenance, treatment, rehabilitation, supervision, conditional release, and discharge in conformity with the objectives of this chapter.

§ 5026. Parole of other offenders not affected

Nothing in this chapter shall be construed as repealing or modifying the duties, power, or authority of the Board of Parole, or of the Board of Parole of the District of Columbia, with respect to the parole of United States prisoners, or prisoners convicted in the District of Columbia, respectively, not held to be committed youth offenders or juvenile delinquents.

## APPENDIX 3

## 18 U.S. CODE CHAPTER 403—JUVENILE DELINQUENCY

Sec.
5031. Definitions.
5032. Delinquency proceedings in district courts; transfer for criminal prosecution.
5033. Custody prior to appearance before magistrate.
5034. Duties of magistrate.
5035. Detention prior to disposition.
Sec.
5036. Speedy trial.
5037. Dispositional hearing.
5038. Use of juvenile records.
5039. Commitment.
5040. Support.
5041. Parole.
5042. Revocation of parole or probation.

**§ 5031. Definitions**

For the purposes of this chapter, a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

**§ 5039. Commitment**

No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

**§ 5040. Support**

The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for 'support of United States prisoners' or such other appropriations as he may designate.

**§ 5041. Parole**

A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title.

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## APPENDIX 4

### (1)

NATIONAL PRISON PROJECT,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
*Washington, D.C., April 19, 1978.*

NORMAN CARLSON,
*Director, Federal Bureau of Prisons,*
*Washington, D.C.*

DEAR DIRECTOR CARLSON: As you are aware, the National Prison Project has been conducting for quite some time an investigation into the Bureau's implementation of Title 18 U.S.C. § 5039. This Act requires the Attorney General to investigate the availability of community-based facilities or foster homes for juveniles who are adjudicated under the Act and to place them in such facilities if such placement is possible. We have been following the Bureau's transfer of juveniles from federal institutions to state facilities and are extremely concerned with its choice of facilities.

In particular, we are disturbed about the suitability of Emerson House in Denver, Colorado as a placement for federal youth offenders. On December 21, 1977, we wrote you, on the basis of our research into the facility, about the serious deficiencies which exist and asked the Bureau to conduct an investigation. You responded by saying that you asked for and received a report on Emerson House which was favorable. Shortly thereafter, attorneys from the Project toured Emerson House and spoke with Mr. Emerson, his staff, juvenile residents and the Bureau's Community Placement Officer. Project attorneys found several egregious practices, including:

1. the confinement of all juveniles in a locked ward for at least their first two months at Emerson House and for longer periods of time for many, with inadequate vocational, educational and recreational programs;
2. the forcible administration of antabuse to juveniles;

3. commingling of juveniles with adults (which violates the Federal Juvenile Justice and Delinquency Prevention Act, 18 U.S.C. § 5039); and

4. lack of experienced and qualified leadership and supervision.

In addition, virtually all the youths confined at Emerson House are Native Americans who are from Montana, North and South Dakota. According to the Program Officer, these states have a dearth of community based facilities. Needless to say, the fact that facilities may not exist is not an excuse for the Bureau to abdicate its statutory mandate to locate or create suitable placements in the youth's home community.

We were recently informed that on April 9, 1978, two juveniles at Emerson House attempted suicide. On April 10, 1978, we learned that one of the youths, Marvin Different Horse, died. The self-inflicted death of a 17 year old youth in the prime of life is an outrage and a disgrace. Violence, however, is not new at Emerson House. Walter Echohawk, staff attorney with the Native American Rights Fund, informed us several months ago that two youths were handcuffed to their beds for at least two days for attempting to escape. In addition, an eleven year old Rosebud Indian (who was a federal offender) was brutally raped last winter by some older youths. These horrible incidents illustrate in graphic terms the complete failure of Emerson House to perform the very basic task of protecting and ensuring the safety and well being of prisoners in their custody.

We are aware that the Bureau intends, as a result of the above actions, to arrange for a Board of Inquiry investigation into Emerson House to be composed of Bureau staff. We believe such an inhouse investigation is inappropriate because it almost assures a lack of impartiality. Furthermore, the Bureau has previously investigated Emerson House and in fact has requested Al Ulibarri, a Program Officer, to make weekly site inspections. To conduct a further review appears to us to be an exercise in futility.

We strongly urge you to take immediate steps to remove all federal youth offenders from Emerson House within 30 days. In addition, we recommend the Bureau make every possible effort to locate juveniles in community facilities which are near their homes. If such facilities do not exist, we believe the mandate imposed by Congress on the Attorney General and the Bureau is to open or create suitable placements. Because of the urgency of the matter, we are considering litigation unless the Bureau attempts to comply with its statutory and constitutional imperatives.

Sincerely,

PEGGY A. WIESENBERG,
NAN ARON,
STEVEN NEY,
*Staff Attorneys.*

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DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS,
*Washington, D.C., April 27, 1978.*

MS. PEGGY A. WIESENBERG,
*Staff Attorney, The National Prison Project,*
*Washington, D.C.*

DEAR MS. WIESENBERG: This is in response to your letter of April 19 concerning the use by the Bureau of Prisons of Emerson House in Denver, Colorado, as a contract facility for federal juvenile offenders.

Regional Director Elwood Toft and a member of his staff have just returned from another visit to Emerson House this week. At that time they met with the staff and Board of Directors and many offenders at the facility. In addition, Mr. Toft met with the District Attorney, representatives of the Colorado Commission on Indian Affairs, and several Indian Organizations concerning the operation of Emerson House. Mr. Toft has again reviewed the entire program at that facility and although it has limitations, which is true in most cases of contract facilities we deal with, it does provide an adequate program and opportunities for the juveniles held there. Quite frankly, there are no other alternatives that we are aware of at this time in that part of the country.

Mr. Toft is continuing to look for alternatives, particularly for the Native American juveniles that are currently being held at Emerson House, such as foster homes and other alternative facilities. We would certainly appreciate any efforts you might be able to make in our behalf in locating alternate facilities for juveniles in that area.

With regard to your specific allegations, Mr. Toft reports that juveniles are held in a secure section for varying periods depending upon their individual ability to be integrated into less secure surroundings. Antabuse is administered only to offenders on the specific medical recommendation of a physician. The only co-mingling of juveniles with adults at Emerson House in the open half-way house portion of the facility. This procedure is not any different than the procedure we follow in all federal or contract halfway houses.

The incidents of violence which you cite in your letter have all been investigated by the Bureau of Prisons. In each of the cases it has been concluded that the staff at Emerson House was not responsible for and could not have prevented the incidents from occurring. Certainly violence of this type is discouraging, especially in a juvenile facility, however, in this case, I do not believe that the violence was a result of poor supervision or lack of experienced and qualified leadership.

Sincerely,

NORMAN A. CARLSON,
*Director.*

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NATIONAL PRISON PROJECT,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
*Washington, D.C., May 10, 1978.*

Re: Federally adjudicated juveniles. Federal Bureau of Prisons.

Representative ROBERT KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, U.S. House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN KASTENMEIER: During hearings on the authorization of the U.S. Justice Department, Federal Bureau of Prisons' budget request, we submitted written comments and oral testimony on a number of serious problems within the Bureau of Prisons. As you will recall, one problem of grave and growing concern to us is what is happening to young persons under Bureau of Prisons' custody in federal contractual facilities. I understand you and your staff share our concern for those juveniles.

I am enclosing a copy of recent correspondence from our office to Director Norman Carlson and a copy of an internal Project report of our on-site investigation at Emerson House. Both contain a description of practices which are, in our view, both outrageously unconscionable and unlawful. Emerson House is a private facility which serves as a contract placement for juveniles committed to the Bureau pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974. Of greatest concern to us are the allegations which point to a pattern of violence within the juvenile unit. Among the most serious are reports about juveniles commingling with adult residents, in violation of the Juvenile Justice Act of 1974, rape, escape, fires, and shackling youths to their beds for days. The most alarming incident is the confirmed report of two recent suicide attempts, one resulting in the April 17, 1978 death of a 17 year old boy.

We believe the situation has become too urgent and too detrimental to the juveniles held there to await the results of further inquiries. As is evident by Mr. Carlson's response to our letter (see attached), the numerous investigations conducted by the Bureau into the problems at Emerson House have revealed little and accomplished nothing. We have consequently asked for the removal of juveniles from that facility within 30 days.

Emerson House represents just one example of the Bureau's failure to place juveniles in suitable facilities. The Bureau relies primarily on the Woodsbend Boys' School in Kentucky and the California Youth Authority facilities to place federally adjudicated offenders. Rather than make a determined effort to make individual placements, the Bureau sends all the East Coast offenders to Kentucky, the West Coast offenders to California and the Native American juveniles to Emerson House. We have been informed by Bureau personnel that both Woodsbend and many of the California facilities have at least as many inadequacies as Emerson House.

In addition, the Bureau of Prisons' has recently requested Congress to appropriate additional money for its program to house federally committed juveniles. I am attaching Prison Project comments on that specific budget request.

We urge that you request the Bureau to both explain its implementation of and compliance with the directives of the Juvenile Justice Act of 1974 and remove federal youth offenders from Emerson House immediately.

We also request your additional consideration be given to public exposure and examination of these problems through a system-wide investigative conducted by the General Accounting Office. Thee G.A.O. has jurisdiction to examine Bureau compliance with the Juvenile Justice Act of 1974 and would call upon its L.E.A.A. audit cite to conduct that study.

The Juvenile Justice Act of 1974 was designed by Congress to protect the best interests of juveniles in this country and to prevent their being institutionalized away from their homes, families and communities. It is the belief of the National Prison Project that only impartial and independent examination of the Bureau's compliance with the directives of that act will resolve these most serious questions.

Sincerely,

NAN ARON,
*Staff Attorney.*
ROBERTA J. MESSALLE,
*Legislative Liaison.*

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(2)

JUNE 9, 1978.

Hon. JOHN C. CULVER,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR CULVER: We have gathered the information requested in your April 25th letter regarding Federal Juvenile Justice issues. We have answered each of the 18 questions in order, and these are attached.

We appreciate your interest in this area, and if you have any further questions, please let us know.

Sincerely,

NORMAN A. CARLSON,
*Director.*

Attachments.

*Question 1.* How many juvenile offenders are currently subject to Bureau of Prisons jurisdiction?

Answer. There were 220 committed juveniles the first of this year. These are juveniles committed to the custody of the Attorney General. All but two of these are currently placed in non-federal facilities.

*Question 2.* The Juvenile Justice and Delinquency Prevention Act of 1974 requires that whenever possible these offenders are to be placed in foster homes or community-based facilities in or near the offender's home community. What actions has the Bureau of Prisons taken to implement this provision?

Answer. We have instructed the staff responsible for determining which facility court committed juveniles shall be placed to make attempts to place them in a foster home or community-based facility initially, if at all possible. (See answer to Question 11.) When we removed all federal juveniles from Bureau of Prisons institutions, we also instructed institution staff and Community Programs Officers (CPO's) to make such a placement whenever possible..

Our CPO's also attempted (and still do) to find suitable community-based facilities with which to contract.

*Question 3.* Why did it take the Bureau of Prisons nearly three years to remove all juvenile offenders from Federal prisons?

Answer. There is no definition within the Juvenile Justice Act of the phrases "adult jail or correctional institution" or "regular contact with adults." We gave this Section careful analysis after its enactment, and concluded that juveniles should not be placed in adult institutions but could be placed in youth institutions. We designated five institutions to receive the juvenile offenders which were geared to educational and vocational programming for youthful commitments.

In addition, we knew from experience that it was very difficult to board juveniles who were 17 years of age and older in non-federal facilities because the majority of states consider a person a juvenile only until his 18th birthday. Thus, a juvenile committed at the age of 17 or older would not be accepted. The majority of our juveniles are 17 years of age or older.

It was just a little over two years after we made our original interpretation that we decided that separation of juveniles from all others was desirable, and took immediate steps to remove juveniles from BOP institutions.

Historically, the Bureau has always boarded our younger (usually 16 and under), less sophisticated juveniles in non-federal facilities, as close to their homes as possible.

*Question 4.* How many juveniles under the jurisdiction of the BOP are placed on probation; in foster homes; in community-based facilities; and in correctional facilities?

Answer. Juveniles placed on probation are under the jurisdiction of the Division of Probation of the Administrative Office of the U.S. Courts. They advise us that 225 defendants were committed under the Juvenile Justice Act during Fiscal Year 1977. Of these, 153 were placed on probation.

We have one juvenile in a foster home. This occurred when one of our community-based contract facilities had to close and the counselor took this boy to his home. Occassionally we have a younger juvenile placed in a foster home, but it is not often. Our juveniles are generally older and more sophisticated and it is not only difficult to find a suitable foster home that will accept them, but even more important, they need more controls, supervision, and professional help than a foster home usually provides.

Of the 220 juveniles we had at the beginning of this year, approximately 70 are in community-based facilities; 147 in correctional facilities, and one in a hospital as a psychiatric patient. There are also two juveniles in the mental health unit of the Federal Correctional Institution, Butner, North Carolina. They were placed there because of serious mental problems, after lengthy attempts at placement outside our system failed. They have been referred again to contract facilities, but we have not yet been advised.

*Question 5.* How many of these juveniles are boarded in facilities that are within 200 miles of the juvenile's home?

Answer. We do not have information on the number of miles involved, but approximately 40 percent of our juveniles were confined in their state of residence in FY 1977. This does not include Mexican aliens.

*Question 6.* What problems prevent more juvenile offenders from being placed in community-based facilities?

Answer. The primary problems are the age, offense, and sophistication of our juvenile population; previous failures in these types of programs; and the refusal of these agencies to accept federal juveniles. A survey we made of the last 96 juveniles in federal institutions, indicated that 78 percent of those juveniles were 18 years of age and over, and 91 percent were 17 years of age and older. Forty-eight had committed serious and/or violent offenses, such as Bank Robbery, Assault, Rape, Murder, Manslaughter, Firearms, Narcotics, etc. This is an example of your statement made during recent hearings that "Commission of violent crimes by young people has nearly doubled in the last ten years and now represents fully one-fourth of the nation's violent crimes."

There is a critical difference in the Federal Juvenile Law and that of most states, in that a federal juvenile can be held until his 21st birthday and to age 22 in some instances, but most states consider a person a juvenile only until his 18th birthday. Thus, both state correctional facilities and most private community-based facilities in such states do not accept federal juveniles who are 17 years of age and older. Most community-based facilities will not accept a juvenile who committed a violent type offense.

As you know, the Juvenile Justice Act requires attempts to divert every juvenile before he is proceeded against in a U.S. District Court. This process usually skims off the less delinquent and younger juvenile and generally, the juveniles that come before Federal Courts are those that a state refuses because they do not have available programs and services adequate for the needs of these juveniles. (Section 5032)

Another issue is the large number of alien juveniles we receive from Mexico. A recent survey of all juveniles committed to us over the last 27 months showed that 21 percent were aliens from Mexico.

We do not have as much difficulty finding community-based facilities near a juvenile's home as we do finding the juvenile who is qualified to be placed in the community with minimum security and controls. Not only do we have to consider the juvenile's best interests, but also that of the community. Placing serious juvenile offenders in community-based facilities is something that has to be considered very carefully. During recent juvenile hearings you indicated that the hearings "have shown conclusively that our country's juvenile system is not protecting people adequately from the serious juvenile crime. It is clear that all too often, truly dangerous juvenile offenders are in many situations treated too leniently."

*Question* 7. **How many among the list of juvenile contract facilities previously supplied to the Committee can be considered community based?**

Answer. **Approximately 20 facilities itemized on our list of October 1977 can be considered community based. The majority of the other facilities have regular community activities, however. A list is attached indicating which ones are considered community based, as you request.**

*Question* 8. What efforts are being made to locate additional suitable juvenile facilities?

Answer. For several months last year, during our phase out of juveniles from federal institutions, we made an intensive effort to locate all suitable juvenile facilities with varying kinds of security and treatment programs in all states. We have a bi-yearly bed space survey, during which we have our community programs staff survey **all bed space in each state.**

The issue will be thoroughly discussed at the June meeting of Central Office and Regional Community Programs staff. We also issued a statement in the recent issue of our Newsletter, advising staff of results on all juveniles committed to our custody the last 27 months. We found that 77 percent of the juveniles were from the Western and Southeastern parts of the country, and Mexico. Sixty-five percent of the juveniles came from eight states and Mexico. A total of 42 states were represented with six states only producing one juvenile during the 27 months. Thus, there may be some states where we do not need a formal juvenile contract. We have our community programs staff on the alert for juvenile facilities in all areas, however.

*Question* 9. Procedures used in selecting juvenile facilities with which to contract?

Answer. Our Community Programs Officers (CPO's) are responsible for locating, inspecting, negotiating and recommending all our contract facilities. These officers are supervised by the Regional Community Programs Administrators, who are the contracting officers for the Bureau. These Regional Administrators review CPO recommendations and make the final decisions as to which facilities will receive our contracts. Central Office staff are involved in finding specialized facilities, such as psychiatric hospitals, from time to time.

*Question* 10. Criteria used by BOP personnel to determine which facilities are suitable for boarding juveniles?

Answer. Criteria for our contracting officers in selecting juvenile boarding facilities are that no juvenile be placed in a facility in which he has regular contact with adult offenders. Ordinarily if the state or local facility is approved for commitment of state juveniles, it is appropriate for federal juveniles. Also, we require that there be adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric and psychological, as outlined in the law itself.

*Question* 11. What procedures are used in determining which facility is most suitable for a particular juvenile offender?

Answer. We have designations officers in the Central Office and in the field (our CPO's) who decide where a newly committed juvenile will be placed. The usual procedure is that a U.S. Marshal sends the designating officer a teletype on a newly committed person with pertinent information. In some instances, we receive the presentence report prepared by the U.S. Probation Officer. If the CPO himself receives the request (which would only be from his state), he, of course, knows his resources and surveys these to see if the juvenile meets the criteria of that facility. If he believes he has a suitable facility, he calls the staff to see if they will accept that individual.

If the designator is someone other than the CPO, he immediately telephones the appropriate CPO in an attempt to place the juvenile as close to his home as possible.

When there is no suitable facility in the home town or state of residence, then the designator considers adjacent states until an appropriate facility is found. It should be kept in mind that a contract agency may refuse to accept a juvenile referred to him.

*Question* 12. What criteria are used in determining which facility is most suitable for a particular juvenile?

Answer. We make every attempt to find the facility that meets the individual needs of the juvenile (i.e., residence, age, offense, prior record, mental or physical health needs, escape record, sophistication, program needs such as education, vocational training, etc.). At times, the Court will make a recommendation, which we carry out if at all possible.

*Question 13.* What activities does the Bureau use to ensure that the faciilties are suitable for boarding juveniles?

Answer. We require regular monitoring of all contract facilities by Community Programs Officers at a minimum of twice a year. Regional Administrators review the monitoring reports and visit contracts periodically. Contractors conferences are held regularly in each region. Contract staff, BOP staff, and U.S. Probation Officers, and others meet together to discuss BOP policy and procedures and problems of mutual concern.

In addition to the two formal visits, CPO's are regularly involved with the juvenile facilities, as they have many casework duties to perform. They approve furloughs, community activities, hospitalizations, etc. They set up parole dockets and handle other parole procedures. Some CPO's visit their juvenile facilities every month and most talk to the staff at least every week. They are always on call should problems arise.

Juveniles, as well as all other federal prisoners boarded in nonfederal facilities, have access to federal personnel through sealed correspondence. (See also answers to Questions 9 and 10.)

*Question 14.* Is there any periodic review of specific placements in these facilities?

Answer. The U.S. Parole Commission reviews all placements on a scheduled basis. Our CPO's periodically review the progress and length of time remaining to serve for the juveniles boarded out from their district. When the individual needs have been met and he has made an adequate adjustment, especially when a juvenile is within six months of his release, he is moved to a less secure facility nearer his home. Contact with the juveniles and facility staff is frequent, as outlined in Question 13.

*Question 15.* Do regional or Central Office staff review suitability of juvenile contract facilities?

Answer. This was answered in our reply to Questions 9 and 13.

*Question 16.* Do regional or Central Office staff review suitability of specific juvenile placements?

Answer. At present, Central Office staff make the majority of initial placements of juveniles, in cooperation with the CPO. This function may be fully regionalized by the end of this year, however. Regional and/or Central Office staff may be called upon when there are special problems with placements. For example, Central Office staff have contacts around the country for psychiatric care and if nothing can be arranged locally, the problem is usually referred in here.

*Question 17.* You indicate in your budget request that in fiscal year 1979, you hope to increase the payment for boarding Federal prisoners in non-Federal facilities by 24%. What is the current average payment for the boarding of Federal juvenile offenders in State and local facilities?

Answer. We did not make such a statement in our Budget Request for fiscal year 1979. We do anticipate an increase in the total number of federal prisoners boarded in non-federal facilities and inflationary increases in the contract rates we will be required to pay. Thus, we asked for an increase in funds to cover these anticipated increased costs.

The average contract rate for juvenile facilities is $32.20. The average daily per capita cost the first quarter of fiscal year 1978, was $37.26.

*Question 18.* What special problems do native Americans present?

Answer. While we have a number of American Indian juveniles, they do not present more special problems than other groups or individuals. It does seem, from experience and not actual research, that their crimes are more violent in proportion to other juveniles. This may reflect their need for more security and control, but this is not always true. The most serious problem is not while the Indian is confined, but when he is released. Many of the Indians come from very deprived homes on Indian Reservations, and thus it is difficult for them not to fall back into their old patterns of behavior. Unfortunately, we have not found the answer to that problem.

(3)

NATIONAL PRISON PROJECT,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
*Washington, D.C., July 14, 1978.*

Re: Bureau of Prisons' placement of Federal youth offenders pursuant to Title 18 § 5039—Juvenile Justice and Delinquency Prevention Act

ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN KASTENMEIER: In this letter I will attempt to summarize the history of the Bureau's involvement with juveniles committed to its custody pursuant to the Federal Juvenile Justice and Delinquency Prevention Act. This summary should give you a general picture of the problems with the Bureau's compliance and ways in which we have sought to work with Bureau staff to find alternative means of handling and placing federally adjudicated offenders.

## CHRONOLOGY

In 1974, an Amendment to the Juvenile Justice and Delinquency Prevention Act, Title 18 U.S.C. § 5039, was passed, which requires the Attorney General, in practical terms the Bureau, to commit juveniles to foster homes or a community based facility located near their home community wherever possible. Funds for contracting with public and private agencies and halfway houses are specifically authorized under 18 U.S.C. § 5040. Shortly thereafter, four institutions were identified by the Bureau of Prisons as classification and confinement centers for offenders committed under the Act. These were the Federal Correctional Institutions at Ashland, Kentucky; Pleasanton, California; Englewood, Colorado; and Morgantown, West Virginia. These four institutions are classified by Bureau policy statements as minimum security.

However, the Bureau's designation of four institutions to hold juveniles did not preclude it from sending many of the youths to other federal prisons, some of which are designated medium security and hold adult prisoners.

The additional facilities used to house juveniles were located at Springfield, Missouri; Terminal Island, California; Tallahassee, Florida; Lompoc, California; Lexington, Kentucky; and Fort Worth, Texas.

From 1974 to the middle of 1977, most federal juvenile offenders were placed in federal institutions, both minimum and medium security. Only one-tenth, amounting to 45–50 juveniles, were sent to state facilities. Unfortunately, most of the state facilities selected during this interim period were much worse than their federal counterparts. Examples of these were the Utah Training School, which was then being challenged in court as having egregious and inhumane conditions; Napa State Hospital in California, a state mental institution; and jails in Louisville, Kentucky; Oklahoma City, Oklahoma; and elsewhere. Most of the facilities used are characterized by tight security measures, large populations, and are located far from residential or urban centers.

We became extremely concerned at this point and wrote several letters to Congresspersons, and Justice Department and Bureau officials and met with Norman Carlson to discuss the matter. Our basic concerns focused on the Bureau's recorded lack of compliance with its statutory mandate to locate youthful offenders in community-based facilities or foster homes. Instead, juveniles were being held in large institutions housing adult prisoners which simultaneously offended not only the statutory language of § 5039, but also the widely accepted notion that juveniles should be segregated from adult offenders. Our meetings with Norman Carlson and Connie Springman, who is in charge of placing juveniles, were instrumental in pressuring the Bureau to revise its practices. During the summer of 1977, the Bureau began removing all federally adjudicated juveniles from BOP institutions and transferring them to state facilities.

## THE CURRENT SITUATION

The vast majority of juveniles are currently housed in large, secure institutions. Only a handful are placed at ranches, youth camps and community houses. Only one youth is in a foster home, and this is due to the fact that the facility where the youth lived was closed. Primarily for reasons of convenience, most of the juveniles from the Southeast and East Coast are housed at WoodsBend Boys Camp in West Liberty, Kentucky; Native American youths are all at Emerson House in Denver, Colorado; and kids from the Western states are incarcerated in California Youth Authority facilities. Three youths are locked in a jail in Lexington, Kentucky and two are at the Federal Correctional Institution at Butner, North Carolina. In addition, we did a breakdown last fall of the number of youths who were incarcerated close to their residences. Contrary to the Bureau's figures on this subject, only 22 out of 90 are incarcerated in their home states.[1]

The information we have already provided you about Emerson House indicates its inadequacies and abuses. The institution is poorly administered, has a locked ward for all new prisoners, administers antibuse (a drug which, when combined with alcohol, causes violent sickness and nausea) regularly, and has had two recent suicide attempts, one being successful. According to Walter Echo-Hawk, a staff attorney at the Native American Rights Fund, several tribes in the Dakotas and other mid-western and western states would be willing to establish youth centers for youthful offenders;[2] The Bureau has never sought to meet with them.

The three facilities being used by the California Youth Authority to house federal youths are equally deficient. The Youth Training School in Chino is a large, secure prison. Quite recently, it has been the setting for gang violence between black and chicano prisoners. Kids are locked in small, one-person cells which are furnished only with a bed, sink and open toilet. One incredible fact which speaks to the high level of violence at the institution is that 40% of the prison population is locked in segregation at any given time (where prisoners spend 23½ hours each day in their cells). The Fred Nelles School, with a population of 325 kids, is a medium security institution and uses as the predominant method of control a rigid behavior modification program. The DeWitt Nelson School houses 280 kids, is isolated and very strictly regimented. A major problem with all these facilities is the presence of adults and the consequent comingling of youths and adults.

The Woodsbend Boys Camp, which is considered to be secure by Bureau Standards, houses youths from all over the country: New York City; the state of Washington; Cario, Illinois; as well as from many southeastern states. It is located far from any metropolitan area and could hardly qualify as a community-based facility for most of the population.

One of the most extreme examples of how kids are mishandled by the Bureau involves a youth who is incarcerated at one of the Bureau's own institutions at Butner, North Carolina. He has written us to report, and Bureau records confirm, that he spent at least four months in solitary confinement. The Bureau's rationale for this harsh action is to keep him separate from adult prisoners. This youth was only permitted to shower once a week, received few opportunities for recreation, and, in fact, rarely left his cell. A letter located in his institutional records written by his father to the Bureau, describes how the distance between his son and himself has hampered their relationship and his (the father's) abilities to help and work with his son, who will be released to his custody.

The Bureau has made only minimal efforts to find suitable placements. On numerous occasions, we apprised the Bureau that no criteria have been devised which direct Bureau officials, Community Program Officers and regional staff in their implementation and interpretation of Section 5039. The Bureau's Policy Statement 7300.106 which specifically pertains to placement of federal juveniles merely recites the language of Section 5039. It contains no guidelines, no criteria, no procedures calculated to either elucidate the decision-making process involved in the transfer of juvenile prisoners or facilitate the taking of action. Once facilities are designated, little monitoring occurs.

## Bureau's Reasons for Non-Compliance

The Bureau's response to criticism about non-compliance with Section 5039 has been to point to the fact that most of the youths have committed violent crimes. Norman Carlson maintains that in a survey made by the Bureau of the last 96 juveniles in federal institutions, half had committed serious offenses, such as "bank robbery, assault, rape, murder, manslaughter, firearm, narcotics, etc." (See Carlson's June 9, 1978 response to Senator Culver). He lumps together several categories of crimes, some of which are not considered serious, such as Narcotics, some types of assault and firearm. Further, I have no idea what crimes the "etc." represents. In any case, I would take strong issue with his statement. Most studies which have reviewed statistics on the numbers of serious offenses committed by a given juvenile population find the numbers to be exceedingly low.[3]

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[1] The statutory language is even stronger, as it refers to community-based facilities and foster homes in one's *home community* [emphasis added].

[2] Certainly the $40 per diem received by Emerson House from the Bureau for each juvenile could well be used by local tribes to provide placements.

According to Norman Carlson, another major reason why the Bureau has not made more of an efforts is because juveniles simply "are not a priority." During a meeting held with him last year, Mr. Carlson stated that his Community Program Officers, who are in charge of making the placements, do not have the time to devote to exploring alternatives for juveniles. They tend to rely on those institutions which have been used in the past. Carlson further stated that staff in the Central Office are too consumed with issues affecting adults to deal with juveniles' problems. (No one in the Central Office was even assigned to deal with juveniles until our meeting.) He also added that many of the offenders are Indians and cannot be designated to their home communities, which are located on reservations, because of what he termed "a lack of suitable environment or facilities." Needless to say, neither of these justifications is either accurate or convincing in view of the strong statutory mandate established by law to place juveniles in community-based facilities or foster homes located in their home community.

### CONCLUSION

Most juvenile justice standards, as well as numerous court orders, advocate eliminating the use of traditional juvenile institutions.[4] They also recognize, however, that some sort of institutionalization may be necessary for juveniles who have committed the most violent offenses, or these youths, commitment to secure facilities may be considered as a dispositional alternative of last resort.

According to recent Bureau statistics, over 225 federal delinquents are housed primarily in state prisons or institutions. It is evident, based on much of the legislative history which preceded passage of the Juvenile Justice Act, that traditional correctional facilities and jails have not provided any of the sorely needed services or programs or even satisfactory living conditions for youthful offenders. It is clear the Bureau has made no effort to find alternatives.

What is particularly disturbing to us is that a federal agency, looked to as a model by most state correctional systems, should so totally abdicate its responsibilities as imposed by Congress. While it may be that the Bureau should have nothing to do with juveniles, so long as it does, it must take a leadership role in juvenile corrections in promoting and carrying out the goals set out in the Juvenile Justice Act.

We strongly urge you to arrange for hearings to expose these problems. We would be happy to provide any additional information and to cooperate in assisting you with the hearings.

Sincerely,

NAN ARON,
*Staff Attorney.*

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(4)

DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS,
*Washington, D.C., April 27, 1978.*

Mr. WALTER R. ECHO-HAWK,
*Native American Rights Fund,*
*Boulder, Colo.*

DEAR MR. ECHO-HAWK: This is in response to your letter of April 18 concerning Emerson House in Denver, Colorado.

I appreciated your suggestions with regard to the investigation into the suicide of an Indian youth and the attempted suicide of another during the last few weeks. Your letter was received after Regional Director Elwood Toft had already convened an investigating team to look into the incidents. I have now received their report and have concluded that the suicide and the attempted suicide could not have been prevented by staff at Emerson House.

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[3] In Massachusetts, for example, where deinstitutionalization is virtually complete, the Department of Youth Services contended that, "no more than 5 percent of youth placed in its care required secure surrounding." Bakal, "The Massachusetts Experience," Delinquency Prevention, Rep. 4 (April 1975).

[4] *Morales* v. *Turman*, 383 F.Supp. 53 (E.D.Tex. 1973), 535 F. 2d 864 (C.A. 5 1974); Juvenile Justice and Delinquency Prevention Act of 1974; ABA-ALI Standards relating to Dispositions; National Advisory Committee re Criminal Justice Standards and Goals Regarding Juvenile Justice and Delinquency Prevention, 1976.

The regional staff of the Bureau of Prisons is continuing to make efforts to locate alternatives, particularly for Indian youths, so that they do not have to be taken far away from their homes when committed to the custody of the Attorney General. The Regional Director has informed me that he is hopeful of establishing foster home placements for some of the youths and other alternatives will be considered.

On his recent trip to Emerson House Mr. Toft again reviewed the entire program at that facility and although it has limitations, which is true in most cases of contract facilities we deal with, it does provide an adequate program and opportunities for the juveniles held there. Quite frankly, there are no other alternatives that we are aware of at this time in that part of the country.

If you have any suggestions and or recommendations as to programs for juveniles, I would appreciate hearing from you.

Sincerely,

NORMAN A. CARLSON,
*Director.*

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NATIVE AMERICAN RIGHTS FUND,
*Boulder, Colo., May 15, 1978.*

Re: EmersonHouse, Indian juvenile programs.

NORMAN A. CARLSON,
*Director, U.S. Department of Justice,*
*Bureau of Prisons,*
*Washington, D.C.*

DEAR MR. CARLSON: Thank you for your letter of April 27, in which you request my recommendations and suggestion for Indian Juvenile Programs. As you indicated, the Emerson House has limitations, particularly for Indian Youths from the Dakotas and Montana who must be confined in that Denver, Colorado, facility.

The Bureau of Prisons has an effirmative duty under 18 U.S.C. § 5039 to locate juveniles near their homes, and to investigate the availability of local programs. In this regard, I recommend that the Bureau support the creation of a series of localized juvenile homes or programs to be administered by Indian Tribes, such that federal judges in the Dakotas and Montana can be assured that when they sentence an Indian Youth, he will receive treatment in or near his community. Our firm may be of some assistance.

A good starting point would be to set up a series of meetings in that part of the country with the Tribes, federal judges and interested community groups[1] to inform them of the situation and request that the Tribes explore the feasibility of setting up juvenile programs within their respective criminal justice systems for contracting purposes with the Bureau of Prisons. Of course, this would require a commitment from the Bureau in terms of funding feasibility studies and providing technical assistance.

The large Tribes in that part of the country have an abundance of social resources. With a minimal amount of support and technical assistance, it seems to me that a series of contract juvenile programs can be established.[2] This would alleviate deleterious situations where a juvenile from Montana must serve time in Denver, Colorado, away from his family, community and Indian culture.

Our firm is able to assist by helping to set up such meetings and providing whatever input and support we can. I would appreciate your thoughts on these suggestions. I have taken the liberty of sending a copy of this letter to various interested persons, as they are also in a position to share their thoughts and concerns with you.

Sincerely,

WALTER R. ECHO-HAWK,
KURT V. BLUE DOG,
ROBERT W. FRAZIER, Jr.

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[1] Bureau of Indian Affairs officials should be invited as the BIA has responsibilities for Indian offenders, and there does exist the Joint Statement of Principles between the BIA and BOP. In addition, U.S. Parole Commission should participate from the standpoint of paroling Indian youths to these proposed programs.

[2] The Swift Bird Project, sponsored by the Cheyenne River Sioux Tribe for adult Indian offenders from a five-state area, is a good example.

NATIONAL PRISON FOUNDATION,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
*Washington, D.C., July 19, 1978.*

ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties, and Administration of Justice, Washington, D.C.*

DEAR CONGRESSMAN KASTENMEIER: I have enclosed copies of Walter Echo-Hawk's and Carlson's correspondence concerning Emerson House. To my knowledge, Mr. Carlson has taken no further action concerning Mr. Echo-Hawk's suggestion that a meeting be held.

Sincerely,

NAN ARON,
*Staff Attorney.*

Enclosures.

(5)

NATIONAL PRISON FOUNDATION,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
*Washington, D.C., August 22, 1978.*

Re: Youth in the Federal prison system.
Representative ROBERT W. KASTENMEIER,
*Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, U.S. House of Representatives, Washington, D.C.*

DEAR BOB: I understand you have designated September 28, 1978 as a day for hearings to investigate the Bureau of Prisons' compliance with and implementation of the Juvenile Justice Act and the Youth Corrections Act. As you know, the Project has been doing more work in the area of incarcerated juveniles and young people and strongly believes the Bureau's role in this area should be examined. Many state adult and juvenile penal systems look to the Bureau of Prisons as a model of modern corrections in this country. While there have been a number of hearings with respect to young people, to date there has been no thorough examination of the Bureau's efforts to fulfill the mandates of these two Acts or how it functions as a model to state systems seeking answers to their juvenile problems. Therefore, the Subcommittee's examination will prove beneficial to youths in the federal criminal justice system and ultimately to those in the state systems.

The Juvenile Justice Act and Youth Corrections Act were both passed by Congress in an attempt to divert our youth from the debilitating effects of the criminal justice system by requiring placement in foster homes, community treatment centers, isolation from hardened criminals, and specialized programs in segregated facilities. The intent of Congress was to prevent impressionable and troubled youths from coming into close contact with older, more experienced persons confined in the criminal justice system in the hope that these children could find a more productive and crime free life before such pressures and influence permanently bound them in our already strained prison populations. Considering the Bureau's overcrowded facilities and the intent to reduce crime and prison populations, the Bureau should have an interest in compliance with and implementation of these two Acts. However, there is reason to believe, and some witnesses have proof, that the Bureau's attempts to meet the mandates of the Acts are inadequate and often negligent. During our meetings and efforts to resolve questions and problems we had with BOP policies and placement of federally adjudicated juveniles, Norman Carlson admitted the Bureau was not in the business of treating juveniles and the agency's expertise was with adult federal offenders. Although the Youth Corrections Act was passed in 1950, the Bureau has shown few attempts at compliance in the Act's 28 year existence. Recent court decisions have ordered YCA prisoners released from custody because the Bureau was unable to implement the Act.

We believe the important preventive intent of the Juvenile Justice Act and the Youth Corrections Act requires more than a brief examination of the Bureau's record concerning them. YCA sentencing affects about 25% of the Bureau's population, roughly 7,500 persons who are first offenders or who are often convicted of property or non-violent offenses. The Bureau's model to state correctional systems is very important when addressing the problem of keeping people out of the criminal justice system, reducing crime and reducing the strained overcrowding in our prisons and jails.

Sincerely,

ALVIN BRONSTEIN,
*Executive Director.*

Enclosure.

## (6)

## DESCRIPTION OF JUVENILE FACILITIES—PREPARED BY THE U.S. BUREAU OF PRISONS, OCTOBER 1978

### COMMUNITY CORRECTIONAL CENTERS, CHESHIRE, CONN.

The Community Correctional Center at Cheshire, Conn., allows offenders regular access to the community. Time limits are subject to the court's terms. The unit is a medium security facility. Many programs are available to the centers some of which are; inhouse work and industry, leisure activites, crisis intervention, formal diagnostic services, individual and group counseling, and individual and group psychotherapy. Supportive education and vocational training are provided. Therapeutic Community drug treatment and drug screening tests are provided, with special medical/physical health services as well.

### WOODSBEND BOYS CAMP, WEST LIBERTY, KY.

Woodsbend Boys Camp located at West Liberty, Ky., has limited access to the community. It does have work and study release for its offenders. There are no time limits. The unit is one of minimum-medium security. A number of programs are provided at Woodsbend. They include inhouse work/industry, leisure time activities, crisis intervention and formal diagnostic services. There is individual, group, family, and legal counseling. Individual and group psychotherapy. In addition, work/study release programs are available with supportive education, vocational training, employment assistance, financial subsidy, and liveout arrangements.

### STATEWIDE RECEPTION CENTER, BROWNWOOD, TEX.

Statewide Reception Center, Brownwood, Tex., offenders have no access to the community unless escorted. There are no time limits. It is a minimum security unit. There are leisure time activities, crisis intervention, and formal diagnostic services available. Counseling is provided on an individual, group, family, and legal basis. Also available are, group and individual psychotherapy programs.

### BROWNWOOD STATE HOME AND SCHOOL, BROWNWOOD, TEX.

Brownwood State Home and School at Brownwood, Tex., is a no access to the community facility. It has no time limits. The unit is of minimum security. There are inhouse work and industry programs, leisure activities, crisis intervention, as well as formal diagnostic services. Individual, group, family, and legal counseling are available. Also there is individual psychotherapy and supportive education programs.

### GATESVILLE STATE SCHOOL, GATESVILLE, TEX.

Gatesville State School in Texas is a medium security facility with no time limits. Offenders have no access to the community unless escorted. Programs are provided in group, individual, family, and legal counseling. There are formal diagnostic services and crisis intervention programs. Psychotherapy is available on a group and individual basis. Also inmates may take part in leisure activities, inhouse work and industry, supportive education and vocational training.

### GIDDINGS STATE HOME AND SCHOOL, GIDDINGS, TEX.

Giddings State Home and School in Giddings, Tex. houses offenders who have no access to the community unless they are escorted. Giddings is a minimum security facility with no time limits. They have a number of programs available including; inhouse work and industry, leisure activities, crisis intervention, formal diagnostic services, individual and group counseling, work/study release, supportive education, and vocational training.

### EMERSON HOUSE COMPREHENSIVE CORRECTIONS, DENVER, COLO.

Emerson House Comprehensive Correction Center in Denver, Colo. allows its residents access to the community through work/study release programs. It has no time limits and is a minimum and medium security facility. Offenders may take part in the programs that are available. These programs include; leisure activities, formal diagnostic services, crisis intervention, individual and group counseling, work/study release, supportive education, and employment assistance. There are also drug screening tests and special mental and physical health services.

### LIGHTHOUSE OF HOPE INC., DUNSEITH, N. DAK.

Lighthouse of Hope is a minimum security facility with no time limits and regular access to the community. Majority of programming is in the community. Programs that the offender may participate in are: leisure activities, supportive education and vocational training. There is an employment assistance program and liveout arangements may be worked out.

### MOUNTAIN VIEW SCHOOL, HELENA, MONT.

Mountain View School, Helena, Mont., has limited access to the public through work and study release programs. It is a minimum security facility with no time limits. Numerous programs are available including: inhouse work/industry, leisure activities, crisis intervention, formal diagnostic services, individual group, and family counseling, individual psychotherapy, supportve education, vocational training, employment assistance, and special mental and physical health services.

### EXCELSIOR YOUTH CENTER, DENVER, COLO.

Excelsior Youth Center offers offenders regular access to the community with no time limits and only minimum security. The programmed activities available range from; leisure activities to supportive educational and vocational training. There are also crisis intervention and formal diagnostic services. Individual, group, and family counseling are offered, as well as, group psychotherapy, individual psychotherapy, employment assistance, financial subsidy, and alcohol detoxification. There is a therapeutic community for drug treatment too.

### CENTER YOUTH DEVELOPMENT ACHIEVEMENT, TUCSON, ARIZ.

The Center for Youth Development Achievement in Tucson is a minimum security facility with regular offender access to the community and no time limits are imposed. There are leisure activities available. Individual, group, family, and legal counseling are provided. Crisis intervention, work/study release, supportive education, vocational training, employment assistance, and financial subsidy are also available to the offender.

### MT. VIEW SCHOOL, DENVER, COLO.

Denver, Colo.'s Mt. View School is a minimum security facility with no time limits. Offenders have limited access to the community through work/study release programs. The numerous activities available are: leisure activities, crisis intervention, formal diagnostic services, work/study release, supportive education, vocational training, special mental and physical health services. Also, Mt. View School has group and individual counseling and psychotherapy. There is family and legal counseling too.

### LOOKOUT MOUNTAIN SCHOOL, GOLDEN, COLO.

Lookout Mountain School at Golden, Colo., has no set time limits. It is a minimum security school with limited work/study access for the offender to the community. There are many special programs for the residents: inhouse work and industry, leisure activities, crisis intervention, formal diagnostic services, employment, assistance, financial subsidy, special mental and physical services. Counseling is provided in group, individual, family, and legal form. There are group and individual psychotherapy programs, and special liveout arrangements can be made.

### KICKING HORSE JOB CORPS CENTER, BISMARCK, N. DAK.

Kicking Horse Job Corps Center is a minimum security center with no time limits and regular access to the community relationship. Individual and group counseling are available as well as supportive education, and vocational training. Leisure activities, inhouse work/industry, and employment assistance are also provided for the juvenile. Majority of staff is Indian.

### YELLOWSTONE BOYS RANCH, BILLINGS, MONT.

Yellowstone Boys Ranch at Billings is classified as minimum security with no time limitations. Offenders have regular access to the community. Inhouse work/industry, leisure activities, work/study release, supportive education, vocational training, employment assistance, and liveout can be participated in by the offender. Also provided are individual, group, family counseling. And individual and group psychotherapy programs.

### SOUTHERN CALIFORNIA RECEPTION CENTER CLINIC, NORWALK, CALIF.

Southern California Reception Center Clinic in Norwalk, Calif. is classified as a medium security center. Its offenders are not given access to the community unless escorted. Programs available are: inhouse work/study, leisure activities, crisis intervention, formal diagnostic services, individual, group, family counseling, individual, group psychotherapy, supportive education, vocational training, and employment assistance.

### VENTURA SCHOOL, CAMARILLO, CALIF.

Ventura School is a medium security school. The time limits are none and the community access is none unless by escort. But Ventura School does offer a great many programs that may be participated in by the offender. There are inhouse work/study programs, leisure activities, crisis intervention, formal diagnostic services, work/study release, supportive education, vocational training, financial subsidy, and drug screening tests. Counseling is available in group, individual, and legal forms. There is group and individual psychotherapy, and a therapeutic community for drug treatment.

### YOUTH TRAINING SCHOOL, CHINO, CALIF.

Youth Training School at Chino, Calif. allows its residents no access to the community unless they are escorted. The time limits are none and it is a medium security school. Programs for participation are: inhouse work/study, leisure activities, crisis intervention, with formal diagnostic services too. Individual, family, and group counseling is available. Individual, and group psychotherapy is available too. There is a supportive education program, vocational training, employment assistance, financial subsidy, and special mental and physical services are provided.

### FRED C. NELLES SCHOOL, WHITTIER, CALIF.

The Fred C. Nelles School in Whittier, Calif. is a medium security unit with no time limits. The offender there have limited access to the community through work/study release programs. Many programs are available; inhouse work/industry, leisure activities, crisis intervention, formal diagnostic services, supportive education, vocational training, and employment assstance. Individual, group, and family counseling are provided for the offender, as well as psychotherapy programs on an individual and group basis.

### O. M. CLOSE SCHOOL, STOCKTON, CALIF.

O. M. Close School provides no community access unless it is with an escort. There are no time limits and it is a medium security unit. The programs available are; inhouse work/industry, leisure activities, crisis intervention, formal diagnostic services, and employment assistance. There are also supportive education and vocational training. Counseling may be on an individual, group or family basis, with individual and group psychotherapy also available.

### KARL HOLTON SCHOOL, STOCKTON, CALIF.

Stockton, Calif. hosts Karl Hoiton School for medium security offenders. It has access to the community only through escorted privileges. There is no time limit. Counseling for the offender may be on an individual basis, group basis, or family orientated. Psychotherapy is provided individually or by groups. There is an inhouse work/industry program, leisure activities, crisis intervention, formal diagnostic services, vocational training, employment assistance, and financial subsidy. A therapeutic drug treatment community exists as well.

### NORTHERN CALIFORNIA RECEPTION CENTER CLINIC, SACRAMENTO, CALIF.

This medium security facility at Sacramento, Calif. has no time limits. The Northern Ca. Reception Center Clinic allows offenders no access to the community unless escorted. Programs for special mental and physical health services, drug screening tests, alcohol detoxification, drug detoxification, and formal diagnostic services are available. Also provided are inhouse work/industry, leisure activities, crisis intervention, and supportive education. Individual, group, family, and legal counseling may be used. And individual plus group psychotherapy is available.

### PRESTON SCHOOL OF INDUSTRY, IONE, CALIF.

The Preston School of Industry at Ione, Calif. as a medium security school with no time limits. Offenders have no access to the community unless escorted. Inhouse work/industry, leisure activities, crisis intervention, supportive education, vocational training, and employment assistance is provided. Counseling on an individual, group, and family basis may be obtained. The psychotherapy programs are run on an individual and group basis as well.

### DEWITT NELSON YOUTH TRAINING CENTER, STOCKTON, CALIF.

Dewitt Nelson Youth Training Center allows no access to the community except through escort. It is a medium facility with no time limit. A well rounded program of activities are provided. They include; inhouse work/industry, leisure activities, crisis intervention, individual group, family counseling, individual, group psychotherapy, work/study release, supportive education, vocational training, and employment assistance.

### EL PASO DE ROBLES SCHOOL, PASO ROBLES, CALIF.

El Paso De Robles School hosts many programs even though it is a maximum security school. There is no time limit and community access is unavailable unless through an escort. Some of the school's programs include: inhouse work/industry, leisure activities, crisis intervention, and supportive education. Counseling and psychotherapy are provided on an individual and group basis, and in addition there are also family and legal counsel available.

### BOYS REPUBLIC, CHINO, CALIF.

Even though Boys Republic in Chino, Calif. is not open access to the community, it is a minimum security facility. Time limits: none. The programs available are numerous. Inhouse work/industry, leisure activities, crisis intervention, and formal diagnostic services lead off the list. Supportive education, vocational training, and employment services are stressed. There is individual, group, family, and legal counseling. Individual and group psychotherapy, work/study release programs are also implemented.

### HIGHLAND RIM SCHOOL FOR GIRLS, TULLAHOMA, TENN.

Highland Rim School for Girls at Tullahoma, Tenn. is a medium security facility with no community access except with an escort. The time limits are none. Supportive education programs and vocational training programs are provided. There is inhouse work/industry, leisure activities, crisis intervention, and formal diagnostic services. Counseling for the girls is available on a group, individual, family, and legal basis.

### CASALIBRE, SAN JOSE, CALIF.

Casalibre houses minimum security prisoners with regular access to the community. There are no time limits set. Inhouse work/industry, leisure activities, crisis intervention, and liveout arrangement programs are available. There is counseling on an individual, family, and legal basis. Supportive education, Vocational Training, and employment assistance are provided. A special mental and physical health service adds to the available programs at Casalibre.

### HUMAN SERVICES CENTER, YANKTON, S. DAK.

The Human Services Center at Yankton, S. Dak. is a minimum security facility. It has no time limits but, it has only limited work/study release access to the community. There are available programs in inhouse work/industry, leisure activities, work/study release, supportive education, vocational training, employment assistance, plus liveout arrangements. The center has an extensive program in drug detoxification-inpatient and outpatient, alcohol detoxification, methadone maintenance, drug screening tests, special mental and physical health services. There is a therapeutic drug treatment community. Counseling on an individual, group, family, basis is available plus there are group and individual pschotherapy sessions provided.

### LAWRENCE COUNTY JAIL, DEADWOOD, S. DAK.

Lawrence County Jail in South Dakota is a medium security facility. It has no time limits and there are limited accesses to the community through work/study release programs. Programs at the jail include leisure activities, individual and group counseling, and work/study release programs. This is a new jail, with separate section for juveniles, section for work release, etc.

### COUNTY JAIL, TUCSON, ARIZ.

The county jail at Tucson is a maximum security jail with no time limits and no access to the community unless with an escort. The program available is leisure activities.

### COUNTY JAIL, SAFFORD, ARIZ.

Safford County Jail provides no programs. It is a maximum security facility with no time limits. Unless escorted there is no access to the community.

### MOWEDA YOUTH HOUSE, WESTROY, UTAH

Moweda Youth House in Westroy, Utah is of medium security. It has limited access to the community on work/study release programs. Time limits are on the terms of the court. Individual and family, as well as group counseling is available. Inhouse work/industry programs, leisure activities, crisis intervention, formal diagnostic services, and supportive education programs also are provided to the juvenile.

### EMPATHY HOUSE, BOULDER, COLO.

Empathy House, Boulder, Col. has regular access to the community. It is a minimum security house with no time limits. Many programs are provided. They are broad in spectrum and include; leisure activities, crisis intervention, formal diagnostic services, individual, group, family, and legal counseling, individual and group psychotherapy, and employment assistance. Theraputic community drug treatment, temporary housing/drug treatment, alcohol detoxification, drug screening tests, and special mental/physical health services are also available at Empathy House.

### ADAMS COUNTY JUVENILE DETENTION CENTER, BRIGHTON, COLO.

Adams County Juvenile Detention Center is a minimum security center. It has no time limits and has no access to the community unless with an escort. The provided programs are; leisure activities, crisis intervention, formal diagnostic services, supportive education, and individual psychotherapy. Counseling on an individual, family, and legal basis is available. Also there are special mental and physical health services provided.

### GRANT CENTER HOSPITAL, MIAMI, FLA.

Grant Center is a hospital for severely emotionally disturbed children and adolescents. It is located on a 20 acre ranch site about 22 miles south of downtown Miami. Capacity is 110, for males and females ages range from 9 to 19. The facility is considered minimum security and offers basic education, vocational training, indoor and outdoor recreation and most important, individual and group therapy.

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